

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF MASSACHUSETTS

3  
4 Albert Ford, )  
Plaintiff, )  
5 )  
6 vs. ) Case No. 07cv11457-JGD  
7 )  
James Bender, et al., )  
8 Defendants. )  
9

10 BEFORE: The Honorable Judith G. Dein

11  
12 Bench Trial Day 3  
13  
14

15 United States District Court  
16 Courtroom No. 15  
17 One Courthouse Way  
18 Boston, Massachusetts  
19 July 27, 2011  
20  
21

22 Marianne Kusa-Ryll, RDR, CRR  
23 Official Court Reporter  
24 United States District Court  
25 595 Main Street, Room 514A  
Worcester, MA 01608-2093  
508-929-3399 justicehill@aol.com  
Mechanical Steno - Transcript by Computer

1 APPEARANCES:

2 Wilmer Cutler Pickering Hale and Dorr, LLP  
3 Lisa J. Pirozzolo, Esquire  
4 Anant K. Saraswat, Esquire  
5 Dimple Chaudhary, Esquire  
6 Emily R. Schulman, Esquire  
7 Timothy D. Syrett, Esquire  
8 60 State Street  
9 Boston, Massachusetts 02109  
10 for the Plaintiff.

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22  
23  
24  
25  
Department of Correction  
Legal Division  
Julie E. Daniele, Esquire  
Kevin A. Anahory, Esquire  
70 Franklin Street, Suite 600  
Boston, Massachusetts 02127  
for the Defendants.

I N D E XTestimony of:                      Direct      Cross      Redirect      Recross

Bernard Katz, M.D.

by Mr. Anahory

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by Mr. Syrett

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by Mr. Anahory

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by Mr. Syrett

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Closing Arguments:Page

Ms. Daniele

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Mr. Syrett

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E X H I B I T SNo.                      Description                      For Id.      In Evid.

28                      Medical and mental health  
screening form for Albert  
Ford.

4

29                      Medical record entitled UMass  
Correctional Health Sick Call  
Request Form, dated August 17,  
2007.

58

30                      Medical record entitled UMass  
Correctional Health Sick Call  
Request Form, dated August 20,  
2007.

62

P R O C E E D I N G S

THE CLERK: All rise.

You may be seated.

THE COURT: Good morning.

Where are we on Exhibit B, the medical  
record?

MR. SYRETT: Your Honor, we -- we were able  
to locate it in production; so, we don't object on that  
ground.

THE COURT: All right. So we'll mark it  
then as Exhibit 28.

(Exhibit No. 28 was admitted into evidence.)

THE COURT: Any housekeeping matters or are  
we starting?

MR. SYRETT: Your Honor, just one  
housekeeping matter. On Monday, I think you  
mentioned -- you asked about if there are other records  
relating to diabetes, and we have two exhibits that we  
would submit now that we sent to Ms. Daniele last night.

THE COURT: And why don't we deal with it at  
the conclusion of the defense case and the rebuttal.  
We'll deal with it that way.

Anything else?

All right. Call your next witness, please.

1 MR. ANAHORY: Your Honor, the defense calls  
2 Dr. Bernard Katz.

3 THE CLERK: You're going to be sitting.  
4 Please --

5 THE WITNESS: Oh, sorry.

6 THE CLERK: Please raise your right hand.

7 BERNARD KATZ, M.D., SWORN

8 THE CLERK: Please be seated. Please state  
9 your full name, spelling your last name for the record.

10 THE WITNESS: It's Dr. Bernard Katz,  
11 K-A-T-Z.

12 DIRECT EXAMINATION

13 BY MR. ANAHORY:

14 Q. Good morning, Dr. Katz.

15 Doctor, are you currently employed?

16 A. Yes, I am.

17 Q. And where do you work?

18 A. I work at the Worcester County Jail and House of  
19 Correction, and I also have a private practice of  
20 forensic psychiatry.

21 Q. And how long has your work situation been as it  
22 is now?

23 A. Well, I've had a forensic and general psychiatric  
24 practice for 40 years. I have been with the Worcester  
25 County House of Correction since February of '09.

1 Q. Can you provide the Court with a history of  
2 your -- of your -- can you provide the Court with your  
3 work history.

4 A. Starting when?

5 Q. Starting from graduating college?

6 A. When I graduated from college, I went to the  
7 University of Chicago, got a master's degree. Then I  
8 worked for a few years at Jewish Family Service in  
9 Cincinnati, Ohio. Then went to medical school,  
10 graduated in 1967; did a one-year internship at the  
11 University of Wisconsin at Madison; came to Boston in  
12 1968, for my residency at the Massachusetts Mental  
13 Health Center.

14 When I finished the Massachusetts Mental Health  
15 Center, in those days, there was a military obligation.  
16 I had two years with the Public Health Service. I was  
17 chief of Psychiatry at the U.S. Public Health Service  
18 Hospital in Brighton, Mass.

19 I finished that obligation and began working as  
20 founding medical director of Westwood Lodge Hospital, a  
21 psychiatric hospital in Westwood, Mass. I was there  
22 from, I believe, January of '73, until, I think, July of  
23 '83, if I remember correctly.

24 Then I went to HRI Hospital System. It's a  
25 private psychiatric hospital system in Brookline. My

1 first position there was director of the outpatient  
2 clinics. There were six outpatient clinics, and I was  
3 asked to be the psychiatrist in chief of not only the  
4 outpatient clinics, but the inpatient unit as well. I  
5 was there until -- from about '83 until 1994.

6 In 1994, I assumed the position as medical  
7 director of Bridgewater State Hospital and also oversaw  
8 the psychiatric -- the delivery of psychiatric services  
9 in the Massachusetts prison system.

10 I left there when my contract expired in 1997,  
11 did private practice, private forensic work, and decided  
12 to go back to work in February of '09, in Worcester.

13 Q. Could you just specifically hone in on the  
14 periods of time where you were employed where you had  
15 experience working or dealing with incarcerated  
16 individuals?

17 A. Okay. In 1984, while I was psychiatrist in chief  
18 at HRI Hospital in Brookline, I was asked by then  
19 Commissioner Michael Fair, Commissioner of Correction,  
20 if I would be his psychiatric consultant to the  
21 Department of Correction, which I did on a very, very  
22 part-time basis, and I had various duties; asked to  
23 chair suicide reviews. If a patient either had a near  
24 miss or a completed suicide, there would be a suicide  
25 review. I would chair that.

1 I would be sent around to various prisons in the  
2 state where there were problems, having something to do  
3 with mental health, advising the staff, advising the  
4 custody staff as well. So, that was from 1984, '85  
5 until 1994.

6 I gave that up when I went full-time with  
7 the -- it wasn't with the Department of Correction  
8 because it was a privatized contract, but the group that  
9 ran it was CMS out of St. Louis. So it was with the  
10 Department of Correction but via private vendor.

11 Q. And does any of this experience include assessing  
12 individuals for their appropriateness in segregated  
13 confinement?

14 A. It does now. I wasn't asked to do that when I  
15 was either a consultant for the department or -- that  
16 wasn't part of my duties when I was overseeing the  
17 prison system because that's hands on; but I -- if there  
18 were questions, and there were major issues, that's the  
19 kind of thing I might be brought in to advise on.

20 Q. But currently that is a function of your  
21 employment?

22 A. Oh, yes.

23 Q. Do you have any other professional experience?

24 A. Could you be more specific.

25 Q. Well, I mean, I -- you've related a lot of that,



1 but is there any board certifications?

2 A. Yes. I'm certified by the American Board of  
3 Psychiatry and Neurology. I had a ten-year board  
4 certification with a subspecialty in forensic  
5 psychiatry. That expired in 1999. I just didn't feel  
6 like taking another test to get recertified.

7 Q. Do you have any teaching experience?

8 A. Yes. I've been on the faculty of Harvard for  
9 many, many years, probably the lowest rank conceivable,  
10 but also -- and I think it was around 2001, I was asked  
11 to take over as Psychiatrist in Chief at Tufts New  
12 England Medical Center. The chairman and a professor  
13 resigned precipitously. The department was in chaos. I  
14 was asked to -- to do that, to come in and stabilize the  
15 department, which I did, and I recruited my own  
16 replacement. I was there half-time during that period.

17 Q. And --

18 A. I'm still on -- excuse me -- I'm still on the  
19 Tufts faculty as well.

20 Q. Have you testified as an expert witness in the  
21 area of psychiatry before?

22 A. Yes, I have.

23 Q. How many times?

24 A. Quite a few.

25 Q. Can you just provide the Court with a list of the

1 courts that you've testified in.

2 A. Well, I've testified in Federal District Court, I  
3 would guess, maybe five or six times; I testified in  
4 State Superior Court innumerable times, usually civil  
5 matters.

6 In the old days I did a lot of sexually dangerous  
7 persons examinations. I did that. And District Court,  
8 as you may or may not know, if you go to commit  
9 somebody, that goes through the District Court. I've  
10 had innumerable experiences doing that.

11 MR. ANAHORY: Your Honor, at this time, I  
12 would like to have Dr. Katz qualified as an expert  
13 witness.

14 MR. SYRETT: Your Honor, we don't object to  
15 Dr. Katz testifying regarding the matters that are  
16 set forth in his opinion, but he did not offer an  
17 opinion about Mr. Ford's mental state in 2007 and 2008,  
18 and so we, therefore, think he should be concluded from  
19 offering an opinion about that.

20 THE COURT: All right. I'm not going to  
21 rule on it. He obviously has some expertise in some  
22 areas, but we'll take it question-by-question to make  
23 sure he has a sufficient basis.

24 MR. ANAHORY: Thank you, your Honor.

25 BY MR. ANAHORY:

1 Q. Doctor, are you familiar with the plaintiff in  
2 this matter, Albert Ford?

3 A. Yes, I am.

4 Q. How do you know him?

5 A. I evaluated Mr. Ford at MCI-Cedar Junction. I  
6 don't have the date. My report isn't in front of me,  
7 but maybe a month or a month and a half ago.

8 Q. And how long did that meeting or that evaluation  
9 last?

10 A. The face-to-face with Mr. Ford?

11 Q. Yes.

12 A. Possibly an hour and a half.

13 Q. And did you caution Mr. Ford that you might be  
14 testifying against him in court today?

15 A. I did.

16 Q. Did you do anything else to prepare for your  
17 testimony today?

18 A. I reviewed a voluminous number of records  
19 concerning Mr. Ford, and I met with attorneys. I had a  
20 deposition of a week or so ago, a couple weeks ago, and  
21 I reviewed all of that material.

22 Q. And when you say "records," what records are you  
23 referring to?

24 A. Well, everything I could get my hands on, mostly  
25 the medical records, the mental health records, some

1 custody records that I thought were -- might be  
2 relevant.

3 Q. Did you look at any disciplinary records?

4 A. Yes.

5 Q. Did you do anything else to -- did you review the  
6 DDU?

7 A. Yes, I did.

8 Q. And could you let the Court know what that review  
9 consisted of?

10 A. Sure. While I was down there, I asked for a  
11 tour, and that was graciously provided by Deputy  
12 Bissonette, and I toured the whole DDU. I viewed  
13 Mr. Ford's cell. I saw where the COs were housed. I  
14 looked at some of the program area. Mr. Ford completed  
15 a Spectrum-sponsored course. I looked at what that  
16 setting was like. I reviewed some of the procedures  
17 down there and policies.

18 Q. And based on all of the material that you looked  
19 at in your interview with Mr. Ford, to a reasonable  
20 degree of medical certainty, do you have an opinion with  
21 regard to Mr. Ford's mental health?

22 A. Yes, I do.

23 Q. What is that opinion?

24 A. I do not believe that Mr. Ford suffers from any  
25 significant major psychiatric disturbance.

1 Q. And is there any type of disturbance that you  
2 feel he suffers from?

3 A. It depends on how we define "disturbance." As it  
4 may have come out in the court earlier, I don't know,  
5 but when you go to diagnose somebody, there are  
6 generally five axes that a psychiatrist is directed  
7 to -- to address.

8 The first two are the major ones. Axis I on  
9 which serious mental illness would be noted. Axis II is  
10 for personality disorders, character pathology, and I  
11 did -- while I said that Mr. Ford does not suffer from  
12 any serious major psychiatric or affective disorder,  
13 referring to the diagnosis on Axis I.

14 Axis II is more of a condition, rather than an  
15 illness. It's a lifelong or near lifelong personality  
16 style that if it is rigid enough or creates difficulty  
17 functioning, and it rises to the level of a -- of a  
18 diagnosis; and I felt that Mr. Ford did have a diagnosis  
19 on Axis II.

20 Q. What is that diagnosis, Doctor?

21 A. Antisocial personality.

22 Q. Why do you feel that Mr. Ford has antisocial  
23 personality disorder?

24 A. Do you mean what criteria I used?

25 Q. Yes.

1       A. Well, he gave me a history of -- and I can't  
2       quote all of the details from the diagnostic and  
3       statistical manual, but the ones I can quote, just off  
4       the top of my head, he did give me a history of what I  
5       considered to be a conduct disorder as a child where he  
6       talked about hanging out with his friends that -- he  
7       basically had a -- according to him, a bifurcated life.

8               On the one hand, he was a terrific athlete  
9       in school, but then he had his friends in the  
10      Project -- and with that group he hung out with the  
11      athletes and so on, but he also hung out with kids in  
12      the Projects where he lived, and those kids would get  
13      into trouble. They would drink beer, smoke marijuana,  
14      be involved in some petty crime, and then as he got a  
15      little bit older, the crimes became more serious.

16      Q. And you've testified earlier that you've seen  
17      Mr. Ford's disciplinary history?

18      A. Yes.

19      Q. Do those support this diagnosis of  
20      anti -- antipersonality disorder?

21      A. Well, it's like anything else. It's on a  
22      spectrum. There are a number of people in a prison  
23      system who suffer from antisocial personality disorder  
24      but have made a decision for a variety of reasons to do  
25      their time quietly, and they seek privileges, and they

1 go to lower security, and so forth. So even though they  
2 have this diagnosis, they don't always get into trouble  
3 picking up tickets and so forth.

4           However, there is a subset in every prison that  
5 I've ever seen of serious management problems, and those  
6 individuals have a very, very difficult time dealing  
7 with authority. They're constantly getting into  
8 difficulty with the correction officers and with the  
9 rules and with other inmates and violating the rules;  
10 and in that subset of difficult to manage individuals,  
11 antisocial personality disorders are overrepresented to  
12 an extreme degree. Most of those people in that small  
13 subset do suffer from that diagnosis.

14       Q. I'd like to direct your attention to your meeting  
15 with Mr. Ford in 2007 -- I'm sorry -- in 2011, when you  
16 met him at the Mass. Correctional Institution at Cedar  
17 Junction.

18           Where did that meeting take place within that  
19 facility?

20       A. Well, it took place in a -- it looked like an  
21 interview room that was used, I'm assuming, for attorney  
22 meetings and other examinations, in close proximity to  
23 the DDU.

24       Q. What did you talk about?

25       A. Well, it was a psychiatric examination. I got

1 his psychiatric history. I got his personal history.

2 THE COURT: I'm sorry. Did I miss -- what  
3 was the purpose of this meeting?

4 THE WITNESS: Your Honor, I was asked to  
5 interview Mr. Ford within the context of this particular  
6 litigation to see if I had an opinion as to whether or  
7 not he had a psychiatric disorder and --

8 THE COURT: So you didn't examine him as  
9 part of the prison system itself; this was as part of  
10 the litigation?

11 THE WITNESS: No, your Honor, I'm not with  
12 the Massachusetts DOC.

13 THE COURT: So they didn't bring you in for  
14 placement purposes or anything like that?

15 THE WITNESS: No. No, your Honor.

16 THE COURT: You were brought in for the  
17 litigation?

18 THE WITNESS: Now, if I may, when I was a  
19 consultant or when I was overseeing the psychiatric  
20 program in the DOC, which I stopped doing in '97, this  
21 could very well have been the kind of case that I would  
22 be asked to see.

23 THE COURT: But you weren't.

24 THE WITNESS: But I have no connection with  
25 the Mass. DOC at this point.



1 THE COURT: Thank you.

2 BY MR. ANAHORY:

3 Q. And during your discussions with Mr. Ford, did  
4 you have any discussions specifically with regard to his  
5 pretrial detainee period in 2007?

6 A. I did.

7 Q. What information did Mr. Ford provide to you with  
8 regard to this time period?

9 A. Well, this was in the context of the overall  
10 interview; so, it was not particularly highlighted  
11 anywhere, but as part of the interviews, he was  
12 discussing his history of incarceration and the  
13 difficulties that he has gotten into in life, and the  
14 rest of it.

15 He mentioned that when he was -- his probation  
16 was violated in 2007, and he was reincarcerated at  
17 MCI-Cedar Junction, that he felt very unjustly  
18 reincarcerated. He -- his argument to me wasn't -- and  
19 he wasn't arguing. He was extremely pleasant, a very  
20 nice, intelligent, articulate man. But that he felt  
21 that that was some sort of a setup, a frame; that he  
22 didn't do it. I think this was the heroin issue, the  
23 mailing in of the heroin. He said he didn't do it.  
24 They didn't have any evidence, and he thought this was a  
25 setup. He acknowledged that he pled guilty to it, but

1 he felt he didn't have any other choice, and that  
2 because he felt that he was unjustly reincarcerated,  
3 violated of his probation, that he said that he was blue  
4 about that. He was angry about that. He said he had  
5 some depression, some anxiety.

6 A very good example that he used -- and I didn't  
7 check these particular records, but he said, for  
8 example, well, now he's out using his hour a day out  
9 exercising for the most part. He didn't do very much of  
10 that during this first period, and he used that as an  
11 example of his having been down and blue about -- and  
12 angry about having been unjustly reincarcerated.

13 Q. And at any point, did you note that Mr. Ford  
14 suffered from significant trauma or severe psychological  
15 harm stemming from his incarceration as a pretrial  
16 detainee?

17 MR. SYRETT: Objection, your Honor. This is  
18 an issue that was entirely omitted from Dr. Katz'  
19 report. There's no opinion offered about 2007 or 2008,  
20 and we object that under Rule 26 he shouldn't be allowed  
21 to offer an opinion here today.

22 THE COURT: Is it in his report?

23 MR. ANAHORY: Well, his report states, your  
24 Honor, that he does not suffer from any significant  
25 major mental illness.

1 THE COURT: Does his report address  
2 the 2007 period?

3 MR. ANAHORY: It's mentioned in there, yes,  
4 your Honor.

5 THE COURT: Let me see the report.

6 I'll see counsel at sidebar.

7 (Sidebar as follows:

8 THE COURT: Does this report grant an  
9 interview in 2007?

10 MR. ANAHORY: No, 2011, your Honor.

11 THE COURT: Huh?

12 MR. ANAHORY: It deals with --

13 THE COURT: 2011, but he's testifying now to  
14 what he heard from seeing him in 2007.

15 Where is that here?

16 MR. ANAHORY: It's in here, your Honor.  
17 Just bear with me.

18 MR. SYRETT: Your Honor, I think the only  
19 mention of 2007 is on the bottom of page 3, and  
20 his -- and then going over to page 4, I think he gives  
21 his -- his psychiatric diagnosis, which we -- which is a  
22 current diagnosis. In 2007, he just mentions a few  
23 facts that Mr. Ford reported to him.

24 THE COURT: Do I have that?

25 MR. SYRETT: Oh, I'm sorry. Sorry. Page 2.

1 I was looking at the fax page number. Sorry.

2 THE COURT: Now, but he's testifying, as I  
3 understand it, as to what he discussed with Mr. Ford in  
4 2007.

5 MR. ANAHORY: Right.

6 THE COURT: Does this say he interviewed him  
7 in 2007?

8 MR. ANAHORY: No, your Honor, but he -- when  
9 he interviewed him, it was concerning his whole period  
10 of incarceration. Part of what the -- the task was to  
11 determine if this man was suffering from a mental  
12 illness, and he took into account --

13 THE COURT: Is -- is he testifying now as to  
14 an evaluation he says he made in 2007?

15 MR. ANAHORY: No, your Honor. No.

16 MR. SYRETT: No, our dispute is that the  
17 only mention that he's -- he performed an evaluation in  
18 2011, and he -- his report only mentions 2007 to relay a  
19 couple facts about that period. He offers no opinion  
20 about Mr. Ford's mental state in 2007, and --

21 THE COURT: And you're saying --

22 MR. ANAHORY: Well, your Honor --

23 THE COURT: Okay. How could he decide in  
24 2011 what his mental state was in 2007 without some  
25 facts?

1 MR. ANAHORY: Well, that's actually what  
2 Dr. Grassian has done as well. Dr. Grassian did not  
3 interview the plaintiff in this case in 2007. He  
4 interviewed him in 2011, and the plaintiff relayed his  
5 conditions concerning the pretrial period in 2011.  
6 There's no -- there's no report or no mention of a 2007  
7 report regarding anything to do with the pretrial  
8 experience.

9 MR. SYRETT: Dr. Grassian had met with  
10 Mr. Ford in 2007, so he had a baseline.

11 THE COURT: Didn't he have interviews --

12 MR. ANAHORY: Again, as I'm saying right now  
13 is that Dr. Katz didn't meet with him regarding the 2007  
14 period. Dr. Katz -- Dr. Grassian when he met with him  
15 in 2007 did not opine that there was an issue concerning  
16 his mental health.

17 THE COURT: He can testify not -- he can't  
18 testify as to his opinions. He can testify as to what  
19 facts he had from him in 2007 about his condition in  
20 2007. Okay?

21 MR. ANAHORY: Okay.

22 THE COURT: But not an opinion as to an  
23 opinion as to his mental health.

24 MR. ANAHORY: I want to point out they had  
25 an opportunity to depose Dr. Grassian regarding this

1 issue. They spent a lot of time probing the very issue  
2 regarding his impressions on his 2007 opinions regarding  
3 his pretrial detention.

4 THE COURT: Were you at his deposition?

5 MR. SYRETT: We did ask him. The concern is  
6 that it's not anywhere in his report. On page 3, he  
7 performs a current psychiatric diagnosis, and then at  
8 the bottom -- at the bottom, he says there are two  
9 additional questions.

10 THE COURT: I will sort it out. You have  
11 him testify as to whatever he wants, and I'll sort it  
12 out.

13 ... end of sidebar.)

14 THE COURT: You may proceed.

15 BY MR. ANAHORY:

16 Q. Doctor, at any point did you note that Mr. Ford  
17 suffered from significant trauma or severe psychological  
18 harm stemming from his incarceration as a pretrial  
19 detainee?

20 A. I did not see any evidence of that.

21 Q. You stated earlier that you reviewed Mr. Ford's  
22 medical records?

23 A. Correct.

24 Q. What conclusions have you brought from those?

25 A. Are you including the mental health records in

1 that?

2 Q. All of -- yes. Yes, his medical --

3 A. Well, on the medical side, I think it has been  
4 established that he has -- I'm sorry. Go ahead.

5 Q. I'm sorry. I meant to say mental health records?

6 A. You meant to say mental health records?

7 Q. Yes.

8 A. Okay. Over the period of his incarceration, he  
9 had some periods of time that he was on the mental  
10 health caseload. He agreed to be seen, and that  
11 stretches back into the -- into the distant past, and he  
12 saw the psychiatrists every now -- for certain periods,  
13 and he was on some medication, and my interpretation of  
14 reading the records was that he was seeking some  
15 medications from time to time, not uncommon at all, in  
16 an incarcerated population.

17 THE COURT: Do you recall what periods those  
18 were?

19 THE WITNESS: Your Honor, I'm sorry. I  
20 didn't hear you.

21 THE COURT: Do you recall what periods those  
22 were?

23 THE WITNESS: Where he saw the psychiatrist?

24 I think if the 2007 date is the relevant  
25 date here, I'm almost positive he saw the psychiatrist

1 at certain times prior to 2007 and a number of times  
2 after 2007. I think that's what -- if I may, I didn't  
3 see any major difference between the way he seemed to  
4 the mental health clinicians way before 2007 and how he  
5 seemed to the mental health clinicians during the period  
6 of pretrial detention in 2007 or subsequently,  
7 subsequent to that period of time. He has been pretty  
8 much the same from the clinical psychiatric point of  
9 view throughout his entire incarceration. There have  
10 been some ups and downs.

11 THE COURT: There have been ups and downs  
12 during periods of personal stress or what? What do the  
13 ups and downs mean?

14 THE WITNESS: Well, he spent almost -- you  
15 know, a long time, and people do have their ups and  
16 downs in the prison. They do have an opportunity to  
17 have counseling if they want it. I did not see any  
18 particular precipitance at any time in the distant past,  
19 2007, or subsequent that would account for his seeking  
20 out or -- it's not even seeking out, your Honor. They  
21 offer these services, and sometimes he agreed, and  
22 sometimes he didn't agree, but inmates, particularly on  
23 the DDU, were offered services frequently. I think they  
24 do rounds there, clinical mental health rounds three  
25 times a week and see how they --



1 THE COURT: You don't do those rounds;  
2 right? You don't do those rounds?

3 THE WITNESS: No.

4 THE COURT: No, I don't want --

5 THE WITNESS: Okay.

6 THE COURT: I don't want to hear your  
7 version.

8 THE WITNESS: That's fine. All I'm trying  
9 to say, your Honor, is that he was offered, and that's  
10 what most of the mental health notes indicate. Saw Mr.  
11 Ford, offered to meet with him. Sometimes he met;  
12 sometimes he refused.

13 THE COURT: Continue.

14 BY MR. ANAHORY:

15 Q. Based on your review of the records, were you  
16 able to determine whether Mr. Ford was mentally health  
17 screened prior to him being placed in the DDU in June of  
18 2007?

19 A. That's my impression. I do believe that I  
20 recalled such records. Mental health screen; right?

21 Q. Yes.

22 A. Yes. Uh-huh.

23 MR. ANAHORY: Your Honor, may I show the  
24 witness Exhibit 28?

25 THE COURT: Yes.

1 MR. ANAHORY: Thank you.

2 BY MR. ANAHORY:

3 Q. Doctor, I'm showing you what has been marked into  
4 evidence as Exhibit 28.

5 Do you recognize, not the first page of it, but  
6 pages 2, 3, 4, and 5 of the exhibit?

7 A. Yes, I do.

8 Q. And was this a record that you reviewed in this  
9 matter?

10 A. Yes, it was.

11 Q. Can you please turn to page 3 of the exhibit.  
12 It's actually on the bottom of it. It's listed as 204.

13 A. 204, yes.

14 Q. And what is this? Could you read for the Court  
15 what is listed on -- actually, is this a relevant  
16 psychosocial history portion of this exhibit?

17 A. Well, these are screenings; and so, like most  
18 screenings, they're not in-depth evaluations, but it's a  
19 screening that tries to touch all the bases, which this  
20 form clearly does.

21 Q. I'd like to direct your attention to No. 12 on  
22 this screen.

23 A. Okay.

24 Q. And what is noted there?

25 A. No. 12, it's anxiety, and what's checked off is

1 no history.

2 MR. SYRETT: Your Honor, this is -- this  
3 record was not specifically identified in Dr. Katz's  
4 report; so we object to this line of questioning, going  
5 through it specifically.

6 THE COURT: Objection overruled.

7 Continue.

8 BY MR. ANAHORY:

9 Q. And No. 13, Doctor.

10 A. It says depression: No history.

11 Q. No. 15, Doctor.

12 A. Appetite disturbance: No history.

13 Q. No. 17, Doctor.

14 A. Suicidal ideation: No history.

15 Q. Could you turn to the next page of the exhibit.

16 And what is this page reporting?

17 A. Current observation.

18 Q. And just so we have a frame of reference, could  
19 you turn to the last page of the exhibit.

20 A. Okay.

21 Q. And note the date there on the bottom?

22 A. It's June 26, '07.

23 Q. And could you direct your attention to No. 1,  
24 please.

25 A. On -- under current observation?

1 Q. Under current observation -- I'm sorry -- of  
2 page 3 of 4, really page 4 of 5 in the exhibit.

3 A. Okay.

4 Q. Could you note for the Court what No. 1  
5 indicates.

6 A. No. 1 refers to suicidal ideation and/or suicidal  
7 plan. Both of those boxes are checked no.

8 Q. Could you direct your attention to No. 4, please,  
9 Doctor.

10 A. That is mood and affect. Affect meaning emotion.  
11 The word euthymic is checked, which means normal.  
12 Normal mood and emotional tone.

13 Q. And can you direct your attention to No. 6?

14 A. Sleep: No complaints.

15 Q. And No. 7?

16 A. Concentration: Not impaired.

17 Q. And I just want to go back to No. 4, Doctor. Is  
18 there a box where it could have been checked that  
19 Mr. Ford was depressed?

20 A. Yes, there is.

21 Q. Is that box checked off?

22 A. No, it was not.

23 Q. And based on this information and your review of  
24 the records, were there any mental health  
25 contraindications in placing Mr. Ford in the DDU in June

1 of 2007?

2 A. Not that I saw.

3 THE COURT: Can I have the exhibit? Can you  
4 read for me what No. 17 says.

5 THE WITNESS: Adjustment -- adjustment to  
6 incarceration, and the clinician wrote: Concerns about  
7 being a fed and not knowing why.

8 THE COURT: Is that a medical term?

9 THE WITNESS: No, ma'am.

10 THE COURT: All right. Do you know what  
11 that means?

12 THE WITNESS: I would have to speculate,  
13 your Honor.

14 THE COURT: All right.

15 BY MR. ANAHORY:

16 Q. Doctor, at any point in your review of those  
17 records or any of the records in this matter, did you  
18 note that Mr. Ford suffered from significant trauma or  
19 severe psychological harm?

20 A. I'm sorry. Could you repeat the question.

21 Q. At any point in your review of the records, did  
22 you note that Mr. Ford suffered from significant trauma  
23 or severe psychological harm?

24 A. I didn't see any indication of it.

25 Q. In -- in your review of the records, do those

1 records reflect in 2007 or afterwards any instances  
2 where Mr. Ford complained to medical staff of anything  
3 that could be considered significant trauma or severe  
4 psychological harm?

5 A. Not to my reading.

6 Q. You testified earlier that you took a tour of the  
7 DDU.

8 A. Yes.

9 Q. How long did that tour last?

10 A. I would have to guess about 45 minutes,  
11 thereabouts.

12 Q. What impressions did you draw from that tour?

13 A. Well, the first thing I noticed was that it was  
14 clean, and it was quiet, not all such units are.  
15 Sometimes there's a lot of turmoil in those units. This  
16 particular one, at least when I went through it, was  
17 clean, and it was quiet. I looked at the -- a little  
18 bit of the programming area. I looked at the area where  
19 the COs were sitting in the middle, in the little  
20 glassed-in facility there. I looked at the medical. In  
21 fact, I even think I met one of the nurses. I looked at  
22 the medical area. I viewed Mr. Ford's cell, and things  
23 seemed to be quiet and calm.

24 Q. And were you able to discern what opportunities  
25 inmates have to interact with others?

1       A. Well, I didn't see that much when I was there,  
2 but I did query Deputy Bissonette on that, and I looked  
3 at Mr. Ford's cell where I noticed the TV. I didn't see  
4 a radio, but he might have had one. I know that radios  
5 are permitted there. I also noticed in the  
6 record -- I'm sort of not answering your question  
7 directly, but that at one time a mental health clinician  
8 went around to try and engage him, and he was playing  
9 checkers with another inmate, and I guess -- checkers or  
10 chess. I'm not sure. And I think they were telling  
11 each other the moves. I think it was through the air  
12 vent, and Deputy Bissonette indicated to me that inmates  
13 would communicate with one another. They would slide  
14 notes under the door. They'd talk through the air vent.  
15 They'd shout. And while I didn't see it, the records  
16 did seem to indicate that there was a reasonable amount  
17 of interaction inmate to inmate.

18               In addition, there's a fair amount of staff  
19 interaction. As we know, Mr. Ford has his blood sugars  
20 checked twice a day. There's food delivered to him. He  
21 does get an hour of day outside in recreation.

22               So it's not the same as living in the free world,  
23 but it's -- he did have a fair amount of human contact  
24 while in the DDU.

25       Q. And what other opportunities do DDU inmates have

1 to engage their senses in the DDU?

2 A. I noticed there was a window to the outside.  
3 When I was down there, it was a sunny day, and the light  
4 was there. Now, the window was small. I mean,  
5 it's -- but it was definitely a window. You could  
6 definitely look outside. There's a -- there's a -- as I  
7 mentioned, a TV and, I believe, a radio, although I did  
8 not -- because I didn't go into his cell. I certainly  
9 didn't rummage around.

10 So radio, TV, interaction with health personnel,  
11 interaction with correction officers, visits, telephone  
12 calls, that sort of thing.

13 Q. And could you comment on the mental health  
14 services available to the DDU inmates?

15 A. Just judging from the records, they seem  
16 adequate.

17 MR. SYRETT: Objection, your Honor. Could  
18 we have a time period?

19 THE COURT: You went in, and you interviewed  
20 him --

21 THE WITNESS: Yes, ma'am.

22 THE COURT: -- for a period of time. You  
23 took a 45-minute tour of the DDU, but you don't work  
24 there; right? I mean, so you're just reporting to me  
25 what other people are telling you about the mental



1 health?

2 THE WITNESS: Your Honor, I reviewed a vast  
3 volume of material.

4 THE COURT: So there's a form that you've  
5 seen?

6 THE WITNESS: Well, it's not necessarily a  
7 form. There are progress notes. I reviewed his medical  
8 record, and I reviewed his mental health record, and  
9 there are forms. There are dictated notes. There are  
10 progress notes. All of which indicate attempts or  
11 actual clinical contacts with Mr. Ford that are  
12 documented.

13 THE COURT: Okay. So if I have the medical  
14 records, then I know the extent of those contacts.

15 THE WITNESS: You would see it. Yes, you  
16 would see it in there.

17 BY MR. ANAHORY:

18 Q. How often do mental health personnel conduct  
19 rounds in the DDU?

20 A. My impression is it's three times a week.

21 THE COURT: And where is your impression  
22 from?

23 THE WITNESS: I think from Deputy  
24 Bissonette.

25 THE COURT: You know, we've heard -- I mean

1     either you put on people on the stand who have the  
2     information. I mean, I have no problem with this  
3     witness telling me what he has learned here, but he is  
4     not, as far as I can tell, an expert on the DDU  
5     operations or of Cedar Junction. I mean that's not his  
6     role. So, I don't want to get confused on where the  
7     evidence is -- where the facts are actually coming from  
8     here.

9                 MR. ANAHORY: I believe that -- I may be  
10     mistaken, but I believe that Deputy Bissonette did say  
11     that there were three. I was --

12                THE COURT: And that's fine. But I don't  
13     want this witness to be giving me, with all due  
14     respect, his impression of what other people from the  
15     Department of Corrections told him as to what went on.  
16     That's -- it's too far removed from the actual facts.

17                MR. ANAHORY: Well, I apologize, your Honor.  
18     I was just trying to establish his knowledge of the DDU  
19     and what he looked at and just to establish that he is  
20     familiar with it and -- and is not --

21                THE COURT: Well, that's my problem,  
22     frankly. His familiarity with the DDU is a 45-minute  
23     tour when everything was quiet, and then he has met with  
24     Mr. Ford. I don't have any -- and then he's reviewed  
25     the records.

1 THE WITNESS: Yes, your Honor.

2 THE COURT: You haven't worked there. You  
3 haven't been trained there. It's not his job to oversee  
4 it. So don't -- I need facts.

5 MR. ANAHORY: Yes, your Honor.

6 BY MR. ANAHORY:

7 Q. Doctor, are you familiar with Type 1 diabetes?

8 A. Somewhat.

9 Q. And could you describe the symptoms of the  
10 disease.

11 A. The usual symptoms are when it first presents  
12 until it's diagnosed: thirst, frequent urination,  
13 weight loss, and excessive eating.

14 Q. How is Type 1 diabetes treated?

15 A. With insulin. Diet, exercise, and insulin.

16 Q. And could the disease be caused by placement in  
17 the DDU?

18 A. No.

19 Q. Could the disease be exacerbated by placement in  
20 the DDU?

21 A. Not in my opinion.

22 Q. Now, are you aware of how Mr. Ford's diabetes was  
23 treated by the Department of Correction?

24 A. I read them in the medical records, yes.

25 Q. And, in your opinion, is it medically appropriate

1 to test him two times a day?

2 A. Yes.

3 Q. And if someone's diabetes or his blood sugar  
4 count increased, what would -- what -- are you aware  
5 that Mr. -- whether or not Mr. Ford's diabetes blood  
6 sugar count increased?

7 A. During certain periods of time over the course of  
8 his incarceration, yes.

9 Q. And in your view of the records, what were  
10 the -- what was the Department's response to that?

11 A. To adjust his insulin dose.

12 Q. And is that an appropriate way to treat increased  
13 blood sugar counts?

14 A. Yes.

15 Q. Are you familiar with the findings of Dr. Stuart  
16 Grassian in this matter regarding the effects of  
17 segregated confinement, in general, and in the DDU  
18 specifically?

19 A. I believe so.

20 Q. And do you agree with Dr. Grassian's opinions on  
21 these subjects?

22 A. No, I do not.

23 Q. Why not?

24 A. Because what Dr. Grassian is describing, and I  
25 would agree that with total or near total sensory

1 deprivation, it can be extremely harmful to individuals'  
2 mental health and their mental condition. I do not  
3 believe those are the conditions that exist in this DDU  
4 or any other DDU that I've seen over the past number of  
5 years.

6 Q. Are you familiar with the term "sensory  
7 deprivation"?

8 A. I am.

9 Q. What does that mean?

10 A. Again, it's on a continuum, but if you're talking  
11 about total harmful deprivation, you're talking about a  
12 situation in a darkened room, no sound, no light, very  
13 little human contact, no discussion, no -- no contact  
14 whatsoever, so all of the senses are receiving little to  
15 no input. There's no stimulation there, and prolonged,  
16 profound sensory -- sensory deprivation can have serious  
17 psychological effects. I just don't think that they  
18 apply here.

19 Q. So is it your opinion that DDU inmates are  
20 sensory deprived?

21 A. It's my opinion that they are not.

22 Q. And in your review of the material, your  
23 interview with Mr. Ford and your review of the DDU, is  
24 there any indication that Mr. Ford has been sensory  
25 deprived?

1 A. Not in my opinion.

2 Q. Any indication that he suffered severe  
3 psychological harm or significant trauma in his  
4 placement in the DDU?

5 A. No.

6 Q. Any indication that he suffered severe  
7 psychological harm or significant trauma by being placed  
8 in the DDU as a pretrial detainee?

9 A. Not in my opinion.

10 MR. ANAHORY: Nothing further, your Honor.

11 THE COURT: Can you just tell me -- and he  
12 cross-examined you, but you diagnosed him as an  
13 antisocial personality disorder?

14 THE WITNESS: Yes, your Honor.

15 THE COURT: How is that affected -- is it  
16 affected at all by being incarcerated in the DDU?

17 THE WITNESS: It usually goes the other way  
18 around, your Honor. The guys with the more severe  
19 antisocial personality disorders are usually the people  
20 who require placement in the DDU, so --

21 THE COURT: Because of?

22 THE WITNESS: Well --

23 THE COURT: Because they have problems  
24 interacting with --

25 THE WITNESS: They have problems with

1 authority or problems interacting.

2 THE COURT: But that's not my question. My  
3 question is if you have that condition, and you're  
4 housed in the DDU --

5 THE WITNESS: Yes.

6 THE COURT: -- does that affect the  
7 condition?

8 THE WITNESS: It's an excellent question.  
9 In my opinion, it does not, your Honor.

10 MR. ANAHORY: Thank you, your Honor.

11 CROSS-EXAMINATION

12 BY MR. SYRETT:

13 Q. Good morning, Dr. Katz.

14 A. Good morning.

15 Q. You haven't published any articles about the  
16 effects of segregated confinement; correct?

17 A. That's correct.

18 Q. You haven't published any articles about the  
19 effects of harmful deprivation either; right?

20 A. Correct.

21 Q. And at your deposition, you weren't able to  
22 identify any articles you reviewed about the effects of  
23 segregated confinement; correct?

24 A. I reviewed the -- Dr. Grassian's material that  
25 was appended to his reports.

1 Q. And apart from the material you reviewed in  
2 connection with this case, you weren't able to identify  
3 any other articles that you reviewed about segregated  
4 confinement?

5 A. Not specifically, but I did review, over the  
6 course of my career, things related to this, but I can't  
7 identify specifically what they were.

8 Q. And you weren't able to specifically identify any  
9 articles you reviewed about sensory deprivation either;  
10 correct?

11 A. Correct.

12 Q. Now, you mentioned Dr. Grassian during your  
13 direct examination. You couldn't identify your -- at  
14 your deposition any articles that criticized  
15 Dr. Grassian's articles or his views; correct?

16 A. Not that I could specifically identify, no.

17 Q. And you've never given a presentation about the  
18 effects of segregated confinement; is that right?

19 A. Correct.

20 Q. And you've never given a presentation about  
21 sensory deprivation either; correct?

22 A. Correct.

23 Q. You previously had a private practice as a  
24 treating psychiatrist; is that right?

25 A. Correct.



1 Q. And in your private practice, you've never  
2 treated anyone who has been released from segregated  
3 confinement; correct?

4 A. In my private practice? I don't believe so.

5 Q. You've provided expert opinions in other cases?

6 A. Yes.

7 Q. And this is the first time that you ever provided  
8 an expert opinion about the effects of segregated  
9 confinement; is that right?

10 A. To the best of my knowledge.

11 Q. Dr. Katz, you -- you prepared a report in this  
12 case; correct?

13 A. Correct.

14 Q. Now, I believe you mentioned on your direct  
15 examination that -- that the 2007, 2008 period was not  
16 particularly highlighted anywhere; is that right?

17 A. I don't know what you mean by "highlighted." In  
18 the report?

19 Q. Yes.

20 A. I referenced it.

21 Q. Well, your report didn't include an opinion about  
22 whether Mr. Ford suffered any harm in 2007 and 2008;  
23 right?

24 A. Not specifically, no.

25 Q. In fact, your report does not include any -- does

1 not include any conclusions about Mr. Ford's mental  
2 health in 2007 and 2008; right?

3 A. Well, I believe that it does. When I put in my  
4 report that I don't believe that he suffers from any  
5 significant psychiatric condition and never has that  
6 was -- that has to include the 2007 period as well.

7 Q. Okay. Dr. Katz, I've placed in front of you a  
8 smaller binder, I believe, right in front of you, with a  
9 copy of your deposition.

10 You recall being deposed in this case; correct?

11 A. I do.

12 Q. And you recall -- you recall that we had some  
13 discussion about what was in and what was not in your  
14 report?

15 A. I do.

16 Q. And if I could direct your attention to page  
17 83 --

18 A. Eighty-three?

19 Q. -- of the transcript.

20 Yes.

21 A. Okay.

22 Q. And I'm looking at page -- I'm sorry -- line 3,  
23 on page 83.

24 A. Okay.

25 Q. And I asked you: "Did you set out any specific

1 conclusions or findings about the period of 2007?"

2 Your answer was: "Only in my mind. I didn't  
3 include it specifically and explicitly in the report."

4 Do you see that?

5 A. I do.

6 Q. Did I read that correctly?

7 A. Correct.

8 Q. And then at line 15, I asked you "But you'd agree  
9 that short of understanding what's in your mind, someone  
10 reading this report cannot view or assess the  
11 conclusions that you made about Mr. Ford's state in  
12 2007?"

13 And your answer was: "Specifically, that's  
14 correct. That -- that was not explicit in the report."

15 Did I read that correctly?

16 A. That -- that is correct. I don't think that's  
17 the correct answer however.

18 Q. But that was your testimony in the deposition?

19 A. That was my testimony during the deposition,  
20 that's right.

21 Q. And you're uncertain why you didn't address  
22 Mr. Ford's mental state in 2007 and 2008; isn't that  
23 right?

24 A. I thought that I did. I thought that I did in  
25 the totality of the report. I did not explicitly focus

1 on that time and explicitly state that in 2007, those  
2 particular months, that he specifically did not  
3 demonstrate any significant, major mental illness; and  
4 my report I thought included to that period of time  
5 because it included all of his time.

6 Q. Well, do you recall when I asked you at your  
7 deposition whether you should have included that -- that  
8 period --

9 A. Right. I said that I -- I just -- I didn't give  
10 the proper answer there because I think I did.

11 Q. Well, let's -- let's look at page 85 of your  
12 deposition transcript.

13 A. Okay.

14 Q. And I'm at line 1, and I asked you: "Is there  
15 anything in your report that you have any uncertainty  
16 about?"

17 And your answer was: "I'm uncertain as to why I  
18 did not address the 2007 specific questions. I don't  
19 really know why I didn't do that. I probably should  
20 have done it, but I don't see it here."

21 Did I read that correctly?

22 A. You did.

23 Q. And that was your testimony at the deposition?

24 A. It was, yes.

25 Q. And in your deposition, you also testified that

1 you think you should have included the 2007 and 2008  
2 period; correct?

3 A. Yes.

4 Q. Now, in one of the opinions in your report is  
5 that there is absolutely no indication of anything  
6 remotely approaching sensory deprivation in the DDU;  
7 correct?

8 A. Correct. I don't see it in what page you're  
9 talking about, but that's my testimony, yes.

10 Q. And that's, in fact, from your report as well;  
11 correct?

12 A. I believe so.

13 Q. And by sensory deprivation, you mean an  
14 environment that's close to total sensory deprivation;  
15 correct?

16 A. Correct.

17 Q. And that would be a dark and empty room would  
18 result in sensory deprivation, as you use the term in  
19 your report; correct?

20 A. Correct.

21 Q. And it's your view that the conditions in the DDU  
22 are not harmful; correct?

23 A. Correct.

24 Q. And for the conditions in the DDU to be harmful,  
25 you think a number of sources of stimulation would have

1 to be removed; is that right?

2 A. Well, I wouldn't recommend it, but that is  
3 correct.

4 Q. And, specifically, you think that they would need  
5 to block the sunlight, remove the glass in the door,  
6 prevent inmates from talking to anyone, have no lights,  
7 no TV, no radio, no books, no visits, no phone calls,  
8 and no time out of cell; correct?

9 A. That would do it.

10 Q. But you do agree that an inmate is at greater  
11 risk of suffering mental harm from the conditions in the  
12 DDU than in general population; correct?

13 A. I haven't seen it, but I couldn't argue the  
14 point. I just have never seen it.

15 Q. Well, do you agree with that proposition or not?

16 A. I'm not sure I can agree.

17 Q. Well, let's take another look at your deposition.  
18 If you can turn to page 54.

19 A. Okay.

20 Q. And I'm at -- starting at line 24. I asked you:  
21 "Do you think that there's an increased risk of  
22 deleterious effects in DDU versus the general  
23 population?"

24 A. Uh-huh.

25 Q. And your answer was "Probably."

1 A. Right.

2 Q. "It's irrelevant. We're talking about a relative  
3 thing. I don't think it's very common or very  
4 infrequent, but I would have to say, yeah, probably."

5 A. I would agree with that answer.

6 Q. And you'd also agree that the DDU poses a  
7 relatively greater risk to mental health because the  
8 environment is more stringent and restrictive; correct?

9 A. I guess, in principle, you would have to say yes,  
10 but just compared to what, general population or living  
11 in the free world?

12 Q. Well, compared to general population?

13 A. It's probably -- well, it's more stringent. His  
14 conditions are more stringent there. Sure.

15 Q. And that's why the DDU would pose a greater risk?

16 A. I would have to say in principle. It's  
17 just -- I've never seen it, but in principle, I would  
18 have to assume that that's probably correct.

19 Q. And the only time you've been to the DDU is your  
20 tour recently; correct?

21 A. To that particular DDU.

22 Q. Now, you agree that it's important for mental  
23 well-being to have human contact; right?

24 A. Yes.

25 Q. And you'd also agree that the type of human

1 contact matters?

2 A. In general, sure.

3 Q. So on your tour of the DDU, you visited  
4 Mr. Ford's cell; right?

5 A. Yes.

6 Q. And I'd like to direct you to the larger binder  
7 that's in front of you, to tab 4, which is Exhibit 4.

8 A. Okay.

9 Q. This is a picture of Mr. Ford's cell that you  
10 saw; correct?

11 A. It looks like a picture of a DDU cell. Whether  
12 this is Mr. Ford's, I'm not sure.

13 Q. And all of the furniture is made of cement;  
14 correct?

15 A. Correct.

16 Q. And at your deposition, you describe Mr. Ford's  
17 cell as homey; is that right?

18 A. Correct.

19 Q. And you also describe it as comfortable; correct?

20 A. Well, within limits. It's homey, and it's  
21 comfortable, as one could make in this kind of  
22 environment.

23 Q. Now, you testified on direct that when you toured  
24 the DDU, you thought it was calm and quiet; correct?

25 A. When I was there, it was, yes.



1 Q. And you've never been in the DDU during a code 99  
2 or an emergency; correct?

3 A. No.

4 Q. So you wouldn't know if it's calm and quiet then?

5 A. Are you talking about the particular DDU at Cedar  
6 Junction?

7 Q. Yes.

8 A. Well, it would probably be less calm and less  
9 quiet under a code 99, yes.

10 Q. And you've never been in the DDU at Cedar  
11 Junction during a cell extraction; correct?

12 A. Correct.

13 Q. You'd agree it's probably less calm and quiet  
14 then?

15 A. Correct.

16 Q. You've never spent the night in a DDU?

17 A. Fortunately, no.

18 Q. And so you have no opinion on whether it's less  
19 calm and quiet then?

20 A. I really don't know.

21 Q. And when you were in the DDU, you didn't close  
22 Mr. Ford's cell door; correct?

23 A. No.

24 Q. So you didn't try to communicate with someone  
25 else in an adjoining cell; correct?

1 A. No, I didn't.

2 Q. And, Dr. Katz, another of your opinions is that  
3 Mr. Ford does not show any evidence of a major mental or  
4 affective disorder; right?

5 A. Correct.

6 Q. And a major mental or affective disorder, in your  
7 view, would include being schizophrenic, psychotically  
8 paranoid or profoundly depressed?

9 A. Correct. Among others.

10 Q. But it's possible to suffer psychiatric damage  
11 without developing a major mental affective disorder;  
12 right?

13 A. Well, I would presume so, yes.

14 Q. And Mr. Anahory asked you about whether Mr. Ford  
15 suffered significant trauma or severe psychological  
16 harm, and you'd agree it's possible to suffer trauma and  
17 psychological harm without developing major mental or  
18 affective disorder; correct?

19 A. Could you repeat that, please.

20 Q. Sure.

21 Mr. Anahory asked you about whether Mr. Ford  
22 suffered significant trauma or severe psychological  
23 harm; do you remember that?

24 A. Right.

25 Q. And your opinion is that he didn't --

1 A. Correct.

2 Q. -- correct?

3 But it would be possible to suffer trauma or  
4 psychological harm without developing a major mental or  
5 affective disorder; correct?

6 A. Well, individuals who suffer from post-traumatic  
7 stress disorder would have a diagnosis on Axis I, and  
8 even though that's not schizophrenia, bipolar disorder,  
9 or something like that, it is on Axis I, and it can be a  
10 significant psychiatric disturbance. I didn't see any  
11 of it here.

12 Q. But it's also possible to suffer trauma without  
13 it arising to the level of post-traumatic stress  
14 disorder; correct?

15 A. Correct, yes.

16 Q. Now, a person's belief that he's being unlawfully  
17 confined could affect his mental health; correct?

18 A. I suppose conceivably.

19 Q. And Mr. Ford reported to you that he suffered  
20 depression and anorexia as a pretrial detainee; correct?

21 A. Yes.

22 Q. And as part of preparing your records, you  
23 examined Mr. -- or I'm sorry -- as part of preparing  
24 your report, you examined Mr. Ford's medical records;  
25 correct?

1 A. Right.

2 Q. One of those medical records indicated that  
3 Mr. Ford lost 14 pounds in three months in 2008; right?

4 A. To the best of my recollection.

5 Q. And that weight loss would be consistent with  
6 Mr. Ford suffering from depression and anorexia;  
7 correct?

8 A. That could be one of the reasons but certainly  
9 not the sole reason.

10 Q. And you don't dispute that Mr. Ford suffered  
11 mental distress as a pretrial detainee; right?

12 A. He reported to me that he was depressed and  
13 anxious and angry because he felt that he was wrongfully  
14 violated off of his probation. That was his focus when  
15 I met with him.

16 Q. Now, you've mentioned that Mr. Ford was angry a  
17 couple of times.

18 Is that reflected in your report?

19 A. Well, he wasn't angry at me.

20 Q. Let me ask a slightly different question. You  
21 reported -- you've now mentioned a couple of times that  
22 Mr. Ford was angry in 2007. My question is is that  
23 reflected in your report?

24 A. I don't recall.

25 Q. If I showed you your report, would that help

1 refresh your recollection?

2 A. It might.

3 MR. SYRETT: May I approach, your Honor?

4 THE COURT: Yes.

5 BY MR. SYRETT:

6 Q. And, Dr. Katz, feel free to look anywhere you'd  
7 like in your report, but if I could direct you to the  
8 bottom of page 2.

9 A. Okay.

10 Q. And you -- you wrote: "He has not made any  
11 suicide attempts although does report some vague  
12 suicidal ideation when he was returning from his bail  
13 violation in 2007."

14 A. Right.

15 Q. "At that time he claimed that he had some mild  
16 depressive symptoms manifested by insomnia, reported  
17 anorexia, and overall dysthymia."

18 A. Dysthymia.

19 Q. Dysthymia. Thank you.

20 "He reports that these symptoms lasted  
21 approximately 6 months and reports that he's entirely  
22 asymptomatic at this time."

23 A. Correct.

24 Q. You don't mention that Mr. Ford was angry at this  
25 time; correct?

1       A. I wouldn't because it doesn't go to the issue of  
2       the mild depressive symptoms. The things that I listed  
3       here: anorexia, dysthymia, insomnia are features of the  
4       mild depressive symptoms that he was reporting to me.  
5       The anger was a separate matter.

6       Q. Well, you don't dispute that Mr. Ford did suffer  
7       these symptoms; correct?

8       A. He represented to me that he did. I have no  
9       reason to doubt him.

10      Q. And separately, there's nowhere in your report,  
11      is there, where you report that Mr. Ford was angry in  
12      2007?

13      A. Probably not.

14      Q. Now, Mr. Anahory asked you about Exhibit 28;  
15      correct?

16      A. Yes.

17      Q. Do you still have that in front of you?

18      A. I do.

19      Q. And do you recall the date that Exhibit 28  
20      appears to be prepared?

21      A. I think it was June 26, 2007.

22      Q. And you understand that was the day that Mr. Ford  
23      was returned to custody?

24      A. Yes.

25      Q. And so on -- on June 26, 2007, it reports that

1     there was no depression -- "no depression history, no  
2     anxiety, and no suicidal ideation"; correct?

3         A.    Correct.

4         Q.    But after June 26, 2007, Mr. Ford did report to  
5     you that he suffered depression, anxiety, and he did  
6     have some suicidal ideation?

7         A.    Mild.

8         Q.    Dr. Katz, it would be better for Mr. Ford to be  
9     released to society from the general population, rather  
10    than the DDU; correct?

11        A.    Probably.

12        Q.    And it would be better because life in general  
13    population is more similar to life outside the prison;  
14    correct?

15        A.    We always -- both from psychiatric hospitals and  
16    prisons and any unusual environment, if one can move to  
17    a step-down unit as a transition, it's always  
18    recommended. It can't always happen, but it's always  
19    recommended.

20        Q.    And it's recommended because life in general  
21    population or another step down is more similar to life  
22    outside prison?

23        A.    Correct.

24        Q.    And you'd also agree that Mr. Ford's  
25    participation in programs offered by the DOC would be

1   beneficial?

2       A.   I would think so.

3       Q.   And as a general rule, the more programs he can  
4 participate in, the better?

5       A.   I do not disagree with that.

6       Q.   Now, Dr. Katz, you testified about Mr. Ford's  
7 diabetes; correct?

8       A.   Well, somewhat, yes.

9       Q.   And in your review of Mr. Ford's medical records,  
10 you did see some records that related to his diabetes;  
11 correct?

12      A.   Quite a few.

13      Q.   And Mr. Ford is a Type I insulin-dependent  
14 diabetic?

15      A.   Correct.

16      Q.   And you observed that some of his blood sugars  
17 were high during his pretrial detention?

18      A.   I did.

19      Q.   Ideal blood sugars would be under 100 in the  
20 morning and around 100 to 200 -- 110 during the day; is  
21 that right?

22      A.   Ideally.

23      Q.   And if Mr. Ford's blood sugars were in the 300s  
24 or the 400s, those would be considered high?

25      A.   That's correct.



1 Q. Now, Dr. Katz, you testified that diabetes can be  
2 controlled by diet, exercise, and insulin; is that  
3 right?

4 A. Not always, but that's what we try and do, yes.

5 Q. Those are the recommended treatments?

6 A. Yes. Yes.

7 Q. And you'd agree that Mr. Ford's ability to  
8 exercise is somewhat limited in the DDU?

9 A. Yes.

10 Q. And you'd also agree that, based on your review  
11 of the records, Mr. Ford was only receiving insulin  
12 shots twice a day?

13 A. That's correct.

14 MR. SYRETT: Your Honor, I mentioned at the  
15 outset that we have two additional medical records, and  
16 it seems appropriate to deal with them now.

17 THE COURT: You have the witness here. See  
18 if it works.

19 MR. SYRETT: Okay.

20 MS. DANIELE: Your Honor, I'd like a copy.  
21 I've never seen them.

22 THE COURT: I'm sure you've seen them.

23 MS. DANIELE: I'm sure I've seen them, but I  
24 don't know what they are.

25 (Documents handed to counsel.)

1 MR. SYRETT: May I approach, your Honor?

2 THE COURT: Yes.

3 MR. SYRETT: If there's no objection, we  
4 would move this into evidence as the next exhibit.

5 THE COURT: Is there any objection?

6 MR. ANAHORY: None, your Honor.

7 THE COURT: It will be marked as Exhibit 29.

8 (Exhibit No. 29 was admitted into evidence.)

9 BY MR. SYRETT:

10 Q. Dr. Katz, have you seen Exhibit 29 before?

11 A. I have.

12 Q. This is -- I think, a document that we discussed  
13 at your deposition?

14 A. I don't recall specifically, but I've seen the  
15 document.

16 Q. And if I could direct your attention to the  
17 assessment portion of Exhibit 29.

18 A. Okay.

19 Q. Do you see where it says "DM still uncontrolled"?

20 A. Correct.

21 Q. And DM is -- I may mispronounce it, but diabetes  
22 mellitus?

23 A. Correct.

24 Q. And it is still uncontrolled. Do you know what  
25 that means?

1       A.   It's still not where the medical staff would like  
2   it to be.

3       Q.   And perhaps you can help me decipher the  
4   notations underneath.

5       A.   Okay. Well, if I may, they reference his fasting  
6   blood sugars above the assessment or over in the  
7   right-hand part. F -- FSBs. I don't know. It should  
8   be FBSs, fasting blood sugars, around 150 to 280 in the  
9   morning; 200 to 400 at the second reading; and those  
10   numbers are higher than what we want it to be. So that  
11   is why they said it is still not controlled to where we  
12   want it to be.

13      Q.   And can you --

14      A.   Do you want me to help you with the rest?

15      Q.   Well, can I interject with one question.

16      A.   Yes.

17      Q.   Could FSBs be finger stick blood sugar?

18      A.   Yes. Okay.

19      Q.   And, yes, now, if you could help me decipher  
20   the -- I believe it says, "therefore, will."

21      A.   Correct.

22      Q.   And are they increasing the amount of insulin  
23   that they're giving him?

24      A.   Correct.

25      Q.   Because the diabetes were uncontrolled at that

1 point?

2 A. The -- the sugars were too high. They refer to  
3 it as uncontrolled, which means that it's higher than  
4 they want it to be.

5 THE COURT: If Mr. Ford was out -- not in  
6 the prison situation, which I do understand has  
7 restrictions, but if he was out in the general -- in the  
8 world unrestricted, and he had this condition, and these  
9 levels of diabetes, how often would he be testing  
10 himself? Would it be, like, all day before he eats?

11 THE WITNESS: I don't believe so, your  
12 Honor. I mean, these are just not that dramatic; and  
13 sticking oneself, you know, you do it enough times, it's  
14 unpleasant. We recommend that you do it enough to try  
15 to monitor the blood sugars, but you don't want it to be  
16 so onerous that it's unpleasant. You have to draw blood  
17 on yourself.

18 THE COURT: Are there criteria? Is there  
19 set criteria in the medical world -- and I don't  
20 know -- do you practice involving diabetes?

21 THE WITNESS: I oversee it; and I have seen  
22 hundreds of cases of diabetes, but what we would do is  
23 we would ask the internist to make recommendations, and  
24 then we oversee it; and this is what we would do. We  
25 would adjust the insulin accordingly.

1 BY MR. SYRETT:

2 Q. Dr. Katz, if adjusting the insulin on Mr. Ford's  
3 two shots per day wasn't proving effective, another  
4 option would be to add a third shot of insulin; correct?

5 A. That is possible, but you're going a little bit  
6 beyond my level of expertise.

7 Q. But it wouldn't surprise you to see that course  
8 of action if two shots were proving ineffective, a third  
9 might be added?

10 A. See, the reason I can't answer that 100 percent,  
11 it's possible that a third shot or longer-acting  
12 insulin. Adjustment of insulin is not a simple matter,  
13 and it's something that requires a lot of trial and  
14 error and a lot of effort on the part of  
15 endocrinologists and general interns. So it's not one  
16 size fits all. So I can conceivably think that a third  
17 blood sugar and a third shot a day might do it, but also  
18 some longer-acting insulin could also serve the purpose  
19 as well.

20 MR. SYRETT: Your Honor, may I approach  
21 again?

22 THE COURT: Yes.

23 THE WITNESS: Okay.

24 MR. SYRETT: Your Honor, if there's no  
25 objection, we would move into evidence as Exhibit 30 the

1 document I've just handed Mr. Katz -- Dr. Katz.

2 MR. ANAHORY: No objection, your Honor.

3 THE COURT: Marked as Exhibit 30.

4 (Exhibit No. 30 was admitted into evidence.)

5 BY MR. SYRETT:

6 Q. Dr. Katz, is this a medical record that you've  
7 seen before?

8 A. Yes.

9 Q. And the date is August 20, 2007; is that right?

10 A. Correct.

11 Q. And the -- the top line of the notes indicate  
12 "FSBSs in a.m. still elevated, approximately 225 to  
13 370"; correct?

14 A. Correct.

15 Q. And is that indicating that Mr. Ford's blood  
16 sugars from the finger stick are in the 225 to 370  
17 range?

18 A. It's too high, yes.

19 Q. And you testified that the ideal for blood sugars  
20 in the morning would be around 100?

21 A. You're not going to see that in an  
22 insulin-dependent diabetic, but ideally, yes.

23 Q. And, again, it appears that on Exhibit 30 that  
24 the response of the medical staff was to increase his  
25 insulin dosage; is that right?

1 A. Correct.

2 Q. Now, just so the record is complete in that --

3 A. If I may, I -- I would like to point out as long  
4 as we're talking about this, this one -- this more  
5 recent Exhibit No. 12 was a week before Exhibit No. 11.  
6 Okay? So, it's clear that what happened here is blood  
7 sugars were too high. They increased his insulin from  
8 36 to 40 units, and then they checked it the following  
9 week; and the following week his levels were better but  
10 still not ideal. So then they increased the insulin  
11 from whatever it was, from 40 to 44. This is the way  
12 it's done. You check it, and you adjust accordingly.  
13 That's what they did here.

14 Q. And from your review of the DOC's medical  
15 records, you understand that the DOC diagnosed Mr. Ford  
16 with diabetic neuropathy; correct?

17 A. Yes.

18 Q. And diabetic neuropathy can involve nerve damage  
19 to the feet and ankles?

20 A. Yes, it's generally pain, neuropathy.

21 Q. Neuropathy. I'm sorry. I struggle with the  
22 medical terms.

23 A. It's okay. It's just a different accent.

24 MR. SYRETT: I have no further questions.

25 THE COURT: Redirect?

1 REDIRECT EXAMINATION

2 BY MR. ANAHORY:

3 Q. Doctor, these records prove that the department  
4 was treating Mr. Ford's diabetes, don't they?

5 A. It looks that way to me.

6 Q. And do these records contain any indication, in  
7 your opinion, that the diabetes were exacerbated by his  
8 staying in DDU under pretrial confinement?

9 A. No. These records indicate what you get into  
10 with insulin -- Type I insulin-dependent diabetics.  
11 They have to be readjusted. It's not a simple matter.

12 Q. Doctor, I would like to draw your attention to  
13 the first of the exhibits that Mr. Syrett provided to  
14 you.

15 A. You mean these medical --

16 Q. The one that is called the UMass Correctional  
17 Health Sick Call Request Form.

18 A. Okay.

19 Q. And under the plan --

20 THE COURT: What number exhibit are you  
21 looking at?

22 MR. ANAHORY: I'm sorry, your Honor. I  
23 believe it's 29.

24 Is it 29, Doctor?

25 THE WITNESS: It's Exhibit 11 marked here.



1 THE COURT: Oh, I have -- I have the  
2 originals.

3 THE WITNESS: Oh, okay. Well, the exhibits  
4 were numbered differently. Okay.

5 MR. SYRETT: So --

6 THE COURT: Just for the record, I think the  
7 11 is a deposition exhibit sticker.

8 MR. ANAHORY: Yes, your Honor.

9 THE COURT: So we know what we're talking  
10 about.

11 BY MR. SYRETT:

12 Q. Is it Exhibit 29 that is entitled UMass  
13 Correctional Health Sick Call Request Form?

14 A. Yes.

15 Q. And I'd like to direct your attention to the plan  
16 portion of that exhibit.

17 A. All right.

18 Q. And under number two, what is listed there?

19 A. Hepatitis C.

20 Q. Hepatitis C, does that indicate that Mr. Ford  
21 suffers from hepatitis C?

22 A. Yes.

23 Q. Could hepatitis C be a reason why Mr. Ford lost  
24 14 pounds?

25 A. It's possible.

1 Q. Are there any other reasons that Mr. Ford could  
2 have lost weight other than his diabetes?

3 A. Well, you have to remember that we want diabetics  
4 to lose weight but not lose weight the wrong way. So we  
5 want people's weight to be down. So we don't know if  
6 Mr. Ford was trying to lose weight to help his diabetes  
7 get under better control. We don't know if the weight  
8 loss was related to the diabetes. We don't know if the  
9 weight loss was related to the hepatitis C. We just  
10 don't know.

11 Q. Was there any indication in any of the records  
12 that you reviewed that his weight loss was attributed to  
13 his stay in the pretrial -- his stay in the DDU as a  
14 pretrial confined inmate?

15 A. No.

16 Q. Doctor, Mr. Syrett asked you whether or not you  
17 were in the DDU during a code 99 or a cell extraction?

18 A. Right.

19 Q. You're employed at the Worcester County House of  
20 Correction; isn't that true?

21 A. That's correct.

22 Q. And in your experience at Worcester --

23 A. Yes.

24 Q. -- in the general population of this unit, when a  
25 cell is being extracted, is it loud in there?

1 A. Are you talking about our equivalent of the DDU?

2 Q. No, I am talking general population.

3 A. General population.

4 It depends on how much of a fuss the inmate wants  
5 to -- how much he wants to fight. I mean, some people  
6 will go willingly. They'll cuff up, and they'll go.  
7 Other guys want to make a big tussle about it. So the  
8 greater the tussle, the greater the turmoil.

9 Q. So in your experience, there are circumstances  
10 when, even in a general population unit, the code 99 or  
11 a cell extraction would cause the unit to be loud and  
12 disruptive?

13 A. The code 99, definitely. Those are always loud  
14 and disruptive; and the cell extractions may or may not  
15 be, but certainly they can be loud and disruptive in the  
16 general population as well.

17 Q. So in those -- in those circumstances, it doesn't  
18 matter where you are in the institution. It's going to  
19 be loud and disruptive potentially?

20 A. Correct.

21 Q. And there was much made of the fact that  
22 your -- in your deposition that you didn't include the  
23 2007 period specifically.

24 Was it your understanding that when you said that  
25 Mr. Ford didn't suffer any psychological harm during his

1 period -- period of incarceration, was it your  
2 understanding that you were including the 2007 period?

3 A. Of course, yes.

4 Q. And also in your -- you testified in response to  
5 Mr. Syrett that in your private practice you don't deal  
6 with inmates from -- that have experienced some sort of  
7 issues of segregated confinement; is that true?

8 A. Correct.

9 Q. Do you do so in your current practice at the  
10 Worcester County House of Correction?

11 A. Yes, quite a bit.

12 Q. Could you explain a little bit of that to the  
13 Court.

14 A. Well, unfortunately, the recidivism rate is high,  
15 and since I am the one who sees the people in our  
16 equivalent of the DDU, that's one of my units. So I see  
17 these guys once a week, not all of them, but a certain  
18 portion of them once a week, and a number of them, you  
19 know, they wrap up, and they go out, and then they get  
20 readmitted. Sometimes, believe it or not, the same day  
21 that they get released, but certainly within a few days  
22 or a week, it's not at all uncommon for these guys,  
23 unfortunately, to reoffend and come back to us. So I  
24 see them quite a bit.

25 Q. Doctor, in your opinion, is sensory deprivation a

1 subspecialty of psychiatry?

2 A. Not that I've ever heard of.

3 MR. ANAHORY: Thank you, Doctor. No further  
4 questions.

5 MR. SYRETT: Very briefly, your Honor.

6 RECROSS-EXAMINATION

7 BY MR. SYRETT:

8 Q. Dr. Katz, did you ever ask Mr. Ford why he was  
9 losing weight in 2007 and 2008?

10 A. I don't believe so.

11 MR. SYRETT: No further questions, your  
12 Honor.

13 THE COURT: You may step down.

14 Anything further from the defense?

15 MR. ANAHORY: We rest, your Honor.

16 THE COURT: Rebuttal? Are we done? Are we  
17 done with the evidence?

18 MR. SYRETT: Yes, your Honor.

19 THE COURT: All right. Are you prepared to  
20 make closings?

21 All right. Why don't we -- yes? So why  
22 don't we take a five-minute -- a ten-minute break, and  
23 then we'll have closings.

24 THE CLERK: Court is in recess.

25 (Recess from 10:54 a.m. until 11:14 a.m.)

1 THE CLERK: All rise.

2 You may be seated.

3 THE COURT: All right. To closings.

4 MS. DANIELE: Good morning, your Honor.

5 Throughout this closing, I ask you to remember that  
6 although this trial is only on damages, plaintiff still  
7 has the burden of proving by a preponderance of the  
8 evidence that he is entitled to compensatory damages or  
9 injunctive relief that he seeks.

10 First and foremost in this case, under the  
11 PLRA, he must demonstrate physical injuries. He  
12 presents absolutely no medical expert testimony for  
13 causation regarding the 2007 and 2008 time period that  
14 he was housed in the DDU with regard to either the  
15 exacerbation of his diabetes or his ankle or -- and feet  
16 issues.

17 Plaintiff's attempting to argue that just  
18 this specific time period in the DDU exacerbated his  
19 diabetes. His initial testimony was that he first  
20 realized his diabetes was not being treated properly in  
21 the department when he was released on bail and tested  
22 his blood sugar level; and at that time, he was testing  
23 his sugar levels three times a day, and he was returned  
24 to the DDU.

25 He claims he has significant issues

1 continuing today because the insulin testing occurred  
2 only twice; however, the real fact is that plaintiff was  
3 not happy with his diabetes treatment in 2004 when he  
4 filed another lawsuit seeking to have additional access  
5 to blood testing. There's absolutely no evidence that  
6 his diabetes, which was first diagnosed in 2006, and  
7 which plaintiff states is hereditary, as 99 percent of  
8 his family have it, was affected in any way during 2007  
9 and 2008, the pretrial confinement period that we are  
10 dealing with here.

11 Plaintiff has been housed in the DDU since  
12 that 2002 time period when the diabetes was diagnosed,  
13 and his concerns about testing began as early as 2004.

14 Not only is plaintiff getting appropriate  
15 medical care, as the testimony of Dr. Katz demonstrated,  
16 it is also not affected by his housing.

17 With regard to Mr. Ford's complaints about  
18 his ankle -- ankles and feet, he testified that his feet  
19 got worse while he was in the DDU, during his pretrial  
20 confinement; and that argument is bolstered by the fact  
21 that he was prescribed certain medications during that  
22 time period.

23 First, this Court has been provided  
24 absolutely no information as to what the purpose of  
25 those prescribed medications are. For all we know, the

1 medications could simply be used to combat dry, cracked  
2 skin. More importantly, there's absolutely no evidence  
3 that any problems with his feet or ankles were caused by  
4 his pretrial confinement period.

5           Despite Mr. Ford's initial testimony  
6 regarding the problems with his feet and ankles arising  
7 during this pretrial confinement period, it was clearly  
8 demonstrated that the problems with his feet and ankles  
9 dated back to at least 2003.

10           Moreover, the evidence is clear that Ford  
11 has continuously been provided with ankle sleeves, which  
12 he admitted makes the ankle restraints more comfortable.

13           He has been in the custody of the Department  
14 of Corrections for over 30 years. In that time period,  
15 he has had plenty of practice walking with ankle  
16 restraints, which by observation requires shorter steps.  
17 Those ankle sleeves assist with any additional problems  
18 he may have.

19           Finally, Mr. Ford stated he did not want to  
20 have his feet amputated, and that was his big concern  
21 about his feet. While his relatives have had that  
22 problem, and that's why that's a concern. His relatives  
23 were not housed in the DDU, in the Department of  
24 Correction; therefore, absolutely no link between the  
25 housing during his pretrial confinement period and that



1 injury.

2 THE COURT: So is it your reading of the  
3 PLRA that even if there's a found constitutional  
4 violation there can be no compensatory damages without  
5 physical harm?

6 MS. DANIELE: Your Honor, without physical  
7 harm, he can have no mental or emotional distress  
8 claims. Any further damages would be simply nominal  
9 damages.

10 THE COURT: There can't be any other  
11 compensatory damages? They have to be nominal?

12 MS. DANIELE: Under the PLRA, it's just the  
13 issue of --

14 THE COURT: No, I'm saying if there's a  
15 constitutional violation.

16 MS. DANIELE: If he can prove actual injury,  
17 which I will get to later; but, yes, if he can prove  
18 actual injury, but with regards to any damage claims for  
19 emotional distress, he cannot receive compensation  
20 unless he first has a physical injury related to that.

21 Absent that physical injury, he can't be  
22 compensated for his emotional injuries; but despite  
23 this, Mr. Ford cannot even demonstrate any emotional or  
24 mental injuries in this action.

25 First, let's talk about the first two months

1 of Ford's pretrial confinement. From January 7, 2007 to  
2 March 2nd of 2007, plaintiff testified himself that he  
3 had no mental or emotional distress during that time  
4 period; so, that negates any of that time period.

5 With regard to the time from June 26th of  
6 2007 through April 30 of 2008, plaintiff put forward two  
7 witnesses: himself and Dr. Grassian to testify to his  
8 emotional problems. Ford's testimony, however, was that  
9 he did not want to be a prisoner again after being out  
10 on bail. He could not handle the slamming doors. He  
11 could not handle being locked up. He could not handle  
12 the smell of the, quote, gas. The reality is that  
13 Mr. Ford just did not want to come back to the DOC  
14 custody at all. As he stated, I was out on the street,  
15 and I realized if I could get out, I could be like  
16 everybody else, but Mr. Ford is not like everybody else.  
17 He cannot accept responsibility for any of his actions.  
18 In Mr. Ford's mind, there was absolutely nothing wrong  
19 with sending heroin into MCI-Cedar Junction when he was  
20 out on bail.

21 From 1992 until January of 2007, Mr. Ford  
22 was subject to every condition that he identified caused  
23 him emotional distress during his pretrial confinement  
24 from June 2007 to April 2008. He never ate meals with  
25 others. He never exercised more than one hour a day,

1 five times a week. He never received contact visits.  
2 He never was able to hug his sister when she visited.  
3 He never had more than incidental contact with other  
4 inmates, except when he managed to get close enough to  
5 assault them. He never left his cell without  
6 restraints. He was always subject to pat-down and strip  
7 searches when he left his cell. No different than the  
8 pretrial confinement time.

9           Moreover, Mr. Ford's testimony was not  
10 credible. He admitted that he was a Baptist, but then  
11 admitted that he has been self-identified as a Muslim  
12 for over 30 years in the Department of Correction  
13 custody so that he could, quote, "get oils" to get rid  
14 of the odor from feces in the cells surrounding his.  
15 Even this admission of a lie to the DOC regarding his  
16 religion is not credible. As he has not been in the DDU  
17 for over 30 years, the DDU hasn't even been in existence  
18 for 30 years. In fact, despite identifying as a Muslim  
19 for over 30 years in DOC custody, he told Dr. Grassian  
20 that, quote, I could have become a Muslim and got easily  
21 accepted. Well, for certain, he identified as a Muslim  
22 when he came into our custody.

23           In addition, he has subsequently filed a  
24 lawsuit in this court to have Kingism -- as in the Latin  
25 Kings, the notorious national gang -- be recognized as

1 an organized religion. Then he states that his religion  
2 is Baptist and has never changed.

3 He testified that his emotional distress  
4 occurred after he returned as a pretrial detainee in  
5 June of 2007; however, he received mental healthcare in  
6 2005 and 2006, including medication in 2006 for anxiety  
7 and panic attacks over his legal issues and 2002  
8 incident.

9 What really is the cause of his emotional  
10 distress? He went to court on June 26, 2006 -- June 26,  
11 2007, expecting to plead guilty to the charges arising  
12 out of the 2002 incident and receive probation.

13 Instead, his bail was revoked, and he was returned to  
14 the custody of the Department of Correction and faced  
15 new felony charges, what really caused his emotional  
16 distress at that time.

17 On the streets, Mr. Ford stated his life was  
18 very difficult. According to Mr. Ford, but contrary to  
19 Dr. Grassian, he was struggling with life on the streets  
20 after being in segregation for over 20 years; and the  
21 struggle was not getting easier over the three-month  
22 period; yet, his testimony was that he suffered grave  
23 emotional harm as a result of returning to the DDU, the  
24 one place where he had made himself as comfortable and  
25 normal as possible and had been used to for over

1 15 years.

2 Mr. Ford further told you that he never  
3 received a medical screening when he returned to our  
4 custody on June 26th of 2007. This, again, was  
5 untruthful.

6 Mr. Ford's next witness was Dr. Grassian.  
7 Nathan Horton and Albert Ford, if we are to believe Dr.  
8 Grassian's testimony, these two individuals have  
9 suffered similar injuries.

10 In Grassian's opinion, Mr. Ford's return to  
11 the DDU was like a severe concussion. It was  
12 catastrophic to him.

13 Dr. Grassian testified here that after being  
14 returned to the DDU in June of 2007, he was just a  
15 broken man. Dr. Grassian attributes this to Ford's  
16 housing in the Department Disciplinary Unit; however,  
17 what makes far more sense is that his emotional distress  
18 stemmed from the fact that he was out in the community  
19 for a short period of time. He knew what he was  
20 missing, and he was returned to custody regardless of  
21 the housing.

22 I submit to you that Dr. Grassian's  
23 testimony is that of an advocate, rather than an expert.  
24 To him, all segregated confinement, regardless of the  
25 length or the circumstances is toxic. In his report to

1 Judge Fabricant, written in June of 2007, advocating for  
2 probation for Mr. Ford, Dr. Grassian emphasizes that a  
3 situation like Mr. Ford's in prison, prior to his  
4 release, is not unlike that of soldiers in combat,  
5 except that in prison there is never relief from the  
6 front lines.

7 I am embarrassed to even quote this. It is  
8 the ultimate insult to the brave men that fight for our  
9 freedom that Dr. Grassian compares Mr. Ford to them.  
10 This begins the clear demonstration that Dr. Grassian is  
11 not an unbiased, impartial expert evaluating Mr. Ford's  
12 mental state; rather, he is an advocate for Mr. Ford and  
13 the wrongs he feels that Mr. Ford has suffered as a  
14 result of being placed in segregated confinement based  
15 upon the, quote, inevitable multiple fights, a constant  
16 need to have a shank on hand, a constant need to be  
17 vigilant, and a repeated pattern of disciplinary reports  
18 against him. Apparently, to Dr. Grassian, Mr. Ford's  
19 behavior is just not his fault.

20 Dr. Grassian goes on to tell Judge Fabricant,  
21 that he last interviewed Mr. Ford on June 18th, and that  
22 Mr. Ford had done extraordinarily well in the two months  
23 between his interviews with Mr. Ford and mentions  
24 nothing of the need for mental health treatment.

25 Either Dr. Grassian was acting solely as an

1 advocate or he is an extremely irresponsible  
2 psychiatrist. He is recommending that an individual,  
3 who spent at least 20 years in segregated confinement in  
4 prison, which he states that he believes to be extremely  
5 detrimental to mental health to the extent of toxicity,  
6 be sentenced to probation on a very serious criminal  
7 charge with absolutely no recommendation for counseling  
8 because, in his words, at that point as a professional  
9 psychiatrist, it wasn't his purpose in writing the  
10 letter.

11 Interestingly, it was during the two months  
12 between the interviews with Dr. Grassian that Mr. Ford  
13 sent the heroin into MCI-Cedar Junction. More  
14 interestingly, Mr. Ford testified that he did not  
15 improve during the time that he was out on bail. Why?  
16 Because it doesn't suit his needs today. In June of  
17 2007, it suited his needs to have Dr. Grassian write a  
18 report that he was improving and on track after being  
19 released from prison. Here, however, he needs five to  
20 six years of intensive therapy, based solely upon 375  
21 days spent in unlawful segregation, despite at least  
22 5,475 days of lawful segregated confinement, after which  
23 he had improved drastically in a mere three months.

24 In addition, Dr. Grassian wrote the letter  
25 to Judge Fabricant after two months of pretrial

1     detainment -- pretrial confinement in the DDU. If, in  
2     fact, Ford was truly suffering from severe psychological  
3     harm or significant trauma, as he reported here a couple  
4     of days ago, he would -- wouldn't it have made sense  
5     that he would have put this in his letter to her.

6             Then, in 2009, Dr. Grassian submits another  
7     report to this Court. In this report, he doesn't  
8     mention Mr. Ford at all. He doesn't visit Mr. Ford. He  
9     merely submits an expert report that the DDU is a  
10    horrible place, condemning the DDU.

11            The DDU is not on trial here. Any opinion  
12    as to whether the DDU is an appropriate form of housing  
13    is not the issue. The DDU has been found to be  
14    constitutional. The conditions of confinement are  
15    constitutional. Thus, Dr. Grassian's 2009 report  
16    further demonstrates he is not a mental health expert in  
17    this case, but rather an advocate for Mr. Ford.

18            The first time that Dr. Grassian ever opines  
19    that Mr. Ford has any mental harm associated with his  
20    pretrial confinement associated with this case was in  
21    2011, when he all of a sudden issues a report that  
22    Mr. Ford has significant trauma based upon this time.

23            Dr. Grassian's testimony is also not  
24    credible for an additional number of reasons: He fails  
25    to ever identify the significant trauma in 2009. He



1 fails to provide any basis for delineating just these  
2 specific 375 days that conveniently Mr. Ford is seeking  
3 compensatory damages for. He states that when he met  
4 with Mr. Ford in February of 2011, he was shocked at how  
5 awful he looked; the weight he had lost; his demeanor.

6 Your Honor, I ask you to look at Mr. Ford  
7 today. He looks perfectly healthy; and, frankly, he  
8 looked the same way on the day of his deposition in May  
9 of 2009.

10 But the telling evidence of the lack of  
11 credibility on the part of Dr. Grassian was his  
12 testimony around the October 18, 2011 letter to  
13 Mr. Ford, and I quote, "I want you to know how strongly  
14 I feel you were wronged in this recent criminal case and  
15 how vigorously I would have testified in your behalf if  
16 the matter had gone to trial. In my opinion, there is a  
17 quality of meanness, vindictiveness that underlay this  
18 prosecution against you. I have seen it before, and I  
19 have seen it since, and I wish I had more power to  
20 prevent it."

21 So after meeting Mr. Ford on these three  
22 times, Dr. Grassian feels there's a meanness and  
23 vindictiveness that underlay this prosecution. Clearly,  
24 as an advocate, he, quote, "wishes he had more power to  
25 prevent it."

1           But Dr. Grassian's impartiality in this  
2 letter is not what demonstrates his complete lack of  
3 credibility; rather, it is his explanation under oath as  
4 to the basis of the writing of this letter. When asked  
5 why he sent the letter, Dr. Grassian testified that he  
6 received correspondences from Ford and was trying to  
7 pick up his spirits. He stated again, under oath, that  
8 he had no knowledge that Mr. Ford had pled guilty and  
9 thus been convicted at the time he wrote the letter;  
10 however, when asked why he used the past tense in  
11 referring to the fact that he would have testified on  
12 his behalf, Grassian skirted around the issue,  
13 maintaining he had no knowledge that Mr. Ford had pled  
14 guilty. When the Court pushed him on this issue, he  
15 stated he had no knowledge of why Mr. Ford was even in  
16 the Department's custody at that time.

17           So either Dr. Grassian was less than candid  
18 with the Court or he was merely extremely irresponsible  
19 in stating to Mr. Ford that there was a quality of  
20 meanness and vindictiveness that underlay the  
21 prosecution.

22           Clearly, an inmate, who is sending heroin  
23 into a maximum security institution or possibly because  
24 he doesn't know what he's referring to committing an  
25 even more serious criminal act, cannot be taken at face

1 value.

2 Dr. Grassian was, again, entirely incredible  
3 when he stated that he was referring to the 2002  
4 incident as having a quality of meanness and  
5 vindictiveness, rather than the subsequent heroin charge  
6 as he testified in his deposition.

7 With regard to Mr. Ford's mental and  
8 emotional health during this time period and during his  
9 entire stay in segregation in the Department of  
10 Correction, Dr. Katz has testified -- and I would  
11 represent to you credibly that he may have suffered some  
12 mild depressive symptoms over the course of his  
13 incarceration, but he does not suffer from severe trauma  
14 and does not have any major mental illness.

15 With regard to any potential actual harm  
16 that Mr. Ford may attempt to elicit, any placement  
17 alternatives within the Department of Correction cannot  
18 be based on general population as plaintiff wants you to  
19 compare.

20 Mr. Ford was not appropriate for  
21 general -- excuse me -- general population housing.  
22 Again, Mr. Ford has the burden of proof in this case.  
23 If he wants to use the general population as the  
24 appropriate comparison, he must demonstrate that he was  
25 appropriate for general population housing. He has

1 presented absolutely no testimony that he was  
2 appropriate for general population housing. In fact,  
3 there was no testimony presented at all that he would be  
4 appropriate for anything but segregated confinement.

5 In considering this, ask yourself why did  
6 this man legally spend virtually all of his 30 years in  
7 DOC custody in segregation? Because the credible  
8 testimony from both Deputy Commissioner Bender and  
9 Assistant Deputy Commissioner Mici established that Ford  
10 could not be housed in general population because of his  
11 extensive history of violence, his history being made  
12 over and over and over again while he was housed in  
13 segregation.

14 Going back as early as the 1980s, Ford was  
15 assaulting inmates, threatening staff, being found with  
16 weapons. When Mr. Ford began the sentence that he  
17 completed on January 6, 2007, he was in segregation.

18 Mr. Ford himself admitted that he has been  
19 in segregation since 1993, essentially his entire  
20 sentence. Despite the segregated confinement, Mr. Ford  
21 continues to commit very serious disciplinary  
22 infractions, including a number of plans to seriously  
23 assault other inmates, weapons possessions, gang  
24 activities, and assault on staff.

25 Just think about the seriousness of the 2002

1 incident. The DDU houses inmates that are the most  
2 difficult to manage within the Department of Correction  
3 because of their level of violence and horrific behavior  
4 while incarcerated. This is where Mr. Ford was housed  
5 when this incident occurred. Place yourself in the  
6 position of the nurse in the DDU, locked inside a triage  
7 room with an inmate, who has already been deemed one of  
8 the worst management problems in the department and has  
9 already committed more than one disciplinary infraction,  
10 warranting a DDU sentence.

11 Now, consider the fact that you have a shank  
12 held to your neck and that you have already seen the  
13 officer [sic] stab two officers and no idea how serious  
14 the stab wounds are. Unbelievably, you make it out of  
15 the locked triage room with only emotional scars.

16 Now, place yourself in the position of  
17 Deputy Commissioner James Bender. It is your  
18 responsibility to protect every inmate, every  
19 correctional staff member, and every medical staff  
20 member that steps foot into the DOC institutions. Every  
21 decision that you make could potentially put another  
22 person in harm's way. A decision such as the decision  
23 of where and under what conditions to house the inmate  
24 that terrorized that nurse and stabbed those two  
25 officers is on your shoulders. A wrong decision could

1 result in devastating tragedy.

2 Now consider the fact that even after  
3 Mr. Ford committed these acts and received a ten-year  
4 DDU sanction, which is extremely rare, he continued to  
5 receive disciplinary report after disciplinary report,  
6 including three more disciplinary reports in which he  
7 received DDU sanctions. One of these sanctions was the  
8 result of an incident in which Mr. Ford, from outside  
9 his own cell in Ten Block, grabbed another inmate  
10 through the bars and stabbed him with a weapon.

11 It is your responsibility to protect this  
12 inmate, every other inmate within the department, along  
13 with all staff. Although Deputy Commissioner Bender  
14 could not guarantee the absolute safety and security of  
15 all staff and inmates, nothing short of DDU placement  
16 could mitigate the risk posed by Mr. Ford.

17 Thus, in January 2007 when Mr. Ford became a  
18 pretrial detainee, Deputy Commissioner Bender placed him  
19 in the only housing unit he thought could adequately  
20 house Mr. Ford. And, again, in June 2007, Deputy  
21 Commissioner Bender was tasked with the difficult  
22 responsibility of placing Mr. Ford in an appropriate  
23 housing unit.

24 With all of his knowledge of Mr. Ford's  
25 behavior while in segregated confinement in DOC custody

1 from 1992 to 2007, Deputy Commissioner Bender was then  
2 presented with another important fact. Mr. Ford was an  
3 inmate who left the custody of the Department of  
4 Correction on bail with charges pending. A mere three  
5 months later his bail was revoked for sending heroin  
6 into MCI-Cedar Junction only two months after being  
7 released.

8 Even after he left the custody of the  
9 Department of Correction, he was a threat to the  
10 department. What housing unit within the department  
11 could Deputy Commissioner place Mr. Ford in and still go  
12 to sleep at night without the thought of waking up to  
13 another staff member feeling the fear that that nurse  
14 felt when she was alone with Mr. Ford in the triage room  
15 with a shank held to his neck. DDU was that housing  
16 unit.

17 Thus, although not -- not ideal, the only  
18 other absolutely possible housing units within the  
19 department that could safely house Mr. Ford are Ten  
20 Block, the SMU at MCI-Cedar Junction or the SMU at  
21 Souza-Baranowski Correctional Center.

22 It is important to note that there is no  
23 process involved in the placement of Mr. Ford in either  
24 of these units; rather, the process involved is provided  
25 once the inmate gets there. As such, this placement was

1 entirely appropriate and could have been used for  
2 Mr. Ford's entire pretrial detention.

3 Any comparison, if it would even be  
4 appropriate, to evaluate compensatory damages based on  
5 a comparison would need to be made between the  
6 conditions of confinement in the DDU and those in these  
7 two SMUs. Because the SMUs have some more favor --  
8 favorable conditions than the DDU, while the DDU had  
9 some more favorable conditions than the SMUs, the  
10 plaintiffs damages are nominal.

11 The conditions in both of these units are in  
12 place for the safety and security of staff and inmates,  
13 and they are necessary for the safety and security.

14 Please review the photographs of Mr. Ford's  
15 cell. Unlike the visual images from the Shawshank  
16 Redemption, plaintiff's DDU cell is at least minimally  
17 comfortable. He had full privilege of a television and  
18 a radio. He had use of legal materials, reading  
19 materials, the ability to talk to other inmates, pass  
20 things under the door, go out for recreation for one  
21 hour a day, five times a week, go out for insulin.  
22 His -- in the -- in the SMUs, he would not have had the  
23 use of a TV. The remaining items he would have had.

24 In addition, in the DDU, he received the  
25 entire time as a pretrial detainee the maximum four



1 phone calls and four visits. The only difference in the  
2 SMUs would be that those would be less limited.

3 Please, when you are evaluating Mr. Ford's  
4 damages in this action, remember who he is because  
5 Deputy Commissioner Bender certainly didn't have the  
6 luxury of forgetting.

7 MR. SYRETT: Your Honor, may I just have one  
8 moment?

9 THE COURT: Yes.

10 MR. SYRETT: Thank you.

11 (Counsel conferred.)

12 MR. SYRETT: Your Honor, as an initial  
13 matter, I would move to strike the portions of Ms.  
14 Daniele's closing that are not part of the factual  
15 record in this case.

16 Ms. Daniele effectively testified as to the  
17 nurse's state of mind, and I think she relied on the  
18 contents of the 2002 incident report, which was not  
19 offered into evidence for the truth of the matters in  
20 there; similarly, she relied on the 2005 incident  
21 report, which I don't believe was ever introduced into  
22 evidence.

23 As a matter of professional courtesy, I  
24 didn't object during Ms. Daniele's closing, but I would  
25 like to note my objection for the record and request

1     that that portion be stricken.

2                   MS. DANIELE:   Could I just briefly  
3     respond --

4                   THE COURT:    Yes.

5                   MS. DANIELE:   -- your Honor?

6                   The -- all of the statements that I made  
7     that I relied upon -- as to the nurse's state of mind,  
8     this closing argument, that argument, I just asked you  
9     to put yourself in the nurse's position. I didn't say  
10    what the nurse would feel like.

11                   As for the factual issues of the 2002 and  
12    2005 incident, I am not relying on any physical  
13    documents. Deputy Commissioner Bender testified to  
14    everything that I stated.

15                   THE COURT:   I accept that the arguments are  
16    not evidence. I will -- I'm not going to guess now as  
17    to what came from where. All right. So I'm not going  
18    to strike anything. I recognize that the argument is  
19    what it is, is argument, and I will be limited to the  
20    testimony that actually came in.

21                   And at some point after this, you'll both  
22    explain to me why I didn't get the disciplinary history,  
23    if you were both relying on that. Without the  
24    underlying reports, I understand had a hearsay problem.  
25    I have some confusion, I think, in the record as to when

1 he was serving what period for what, but I'll ask you  
2 about that after.

3 MR. SYRETT: Your Honor, the evidence is  
4 established that Mr. Ford is entitled to damages because  
5 he has been harmed by his unconstitutional confinement  
6 in the DDU as a pretrial detainee.

7 Now, Ms. Daniele would have you look at this  
8 case, not with respect to Mr. Ford's pretrial detention,  
9 but we submit that the DOC did not have the right to  
10 serve as a judge and a jury to treat Mr. Ford as a  
11 convicted prisoner during his pretrial detention, and  
12 that is the substance of the summary judgment decision  
13 that has been issued.

14 The DOC's own records show that Mr. Ford  
15 suffered physical harm, including his poorly controlled  
16 diabetes, when he was returned to the DDU as a pretrial  
17 detainee in 2007; and as Mr. Ford testified, during his  
18 period of pretrial confinement, his -- his diabetic  
19 neuropathy -- neuropathy -- as Dr. Katz corrected  
20 me -- which the DOC itself diagnosed in its records,  
21 caused numbness and burning in his feet resulting in  
22 permanent injury that he continues to suffer.

23 The injuries to Mr. Ford's feet first  
24 required the prescription of Tegretol; and then when he  
25 went back to the doctor, as he testified, because that

1       wasn't working, he was prescribed Neurontin.

2               The seriousness of these injuries is further  
3       evidenced by the fact that Mr. Ford cannot even feel the  
4       leg -- the leg chains DDU inmates are forced to wear;  
5       that they were cutting into his ankles.

6               Now, the DOC position seems to be that for a  
7       physical injury to meet the PLRA test, it has to be a  
8       new injury. We dispute that. The PLRA says a physical  
9       injury. Mr. Ford may have had diabetes before, but the  
10      evidence is clear that his diabetes was exacerbated and  
11      grew worse, and he suffered physical injuries during the  
12      period and as a result of his pretrial detention.

13              We also, as I -- as we mentioned at the  
14      outside, we dispute that the PLRA applies, and your  
15      Honor asked Ms. Daniele about that. The PLRA says that  
16      it applies for claims that are for actions that are for  
17      mental or emotional distress.

18              Mr. Ford certainly suffered mental and  
19      emotional distress here, but he has a constitutional  
20      claim that is not solely dependent on suffering mental  
21      or emotional stress. He was deprived of his due process  
22      rights, and that resulted in significant deprivation.

23              We also have established that Mr. Ford did  
24      suffer mental harm, which both he and Dr. Grassian  
25      detailed to you, including his depression, his anxiety,

1 fear, and hypersensitivity to stimulation, and the harsh  
2 conditions of the DDU.

3 And, again, this doesn't have to be a new  
4 occurrence. Mr. Ford was clear that toward the end of  
5 his prior DDU period in 2006, 2005, he was starting to  
6 have a harder time, but he was also clear that when he  
7 was a pretrial detainee, it was a different experience  
8 for him, and he suffered much more than he had because  
9 he -- he realized what the DDU had previously done to  
10 him.

11 As a result of his DDU confinement, Mr. Ford  
12 was denied access to fresh air, recreation  
13 opportunities, phone privileges, a real library and  
14 human contact beyond the daily rituals of strip  
15 searching and shackling.

16 Defendants contend that administrative  
17 segregation is the proper baseline for assessing damages  
18 in this case, not the conditions in the general  
19 population, but that argument fails for three reasons:  
20 first, all of the witnesses from the DOC agree, and the  
21 regulations confirm that administrative segregation is a  
22 temporary placement. As such, it would not have been  
23 Mr. Ford's permanent placement either as a pretrial  
24 detainee or a convicted inmate.

25 Second, the DOC's witnesses agree, and,

1 again the regulations confirm, that with respect to  
2 Mr. Ford, the DOC failed to secure the requisite  
3 approval, assess the multiple factors, conduct the  
4 ongoing monitoring, or complete the documentation  
5 required to place and continue to hold Mr. Ford in  
6 administrative segregation.

7 Third, the DOC witnesses are engaging in  
8 nothing more than rank speculation to suggest that if  
9 they had not violated Mr. Ford's constitutional rights,  
10 they would have fulfilled these requirements and placed  
11 him in administrative segregation.

12 Ms. Mici testified that after this Court  
13 held that the DOC must give Mr. Ford the process to  
14 which he is constitutionally entitled, the DOC remained  
15 paralyzed, unable to agree on his proper placement. She  
16 described at least two meetings of senior officials from  
17 the DOC, including the commissioners at the time, the  
18 General Counsel, at which they were able to  
19 make -- reach no conclusions about where to place  
20 Mr. Ford.

21 And, indeed, Mr. Bender testified, I  
22 believe, that he didn't even read the decision and took  
23 no steps to see that the ruling was -- was honored or  
24 recognized in any way.

25 So to now suggest that in 2011, it was

1     imminently clear where Mr. Ford would have been placed  
2     in 2007, is self-serving at best and has no support in  
3     the record.

4             Finally, it is abundantly clear that  
5     releasing Mr. Ford directly from the DDU into the  
6     community is irresponsible. A transition program is  
7     needed in order for Mr. Ford to have time to adjust to  
8     social settings and interactions that he will encounter  
9     following his release from prison.

10            In view of the evidence that has been  
11     presented, we request that the Court grant Mr. Ford  
12     damages for the harm he suffered on a per diem basis for  
13     the 375 days he was wrongfully detained in the DDU as a  
14     pretrial detainee.

15            We respectfully suggest that the Court award  
16     Mr. Ford \$200 per day for a total award of \$75,000. We  
17     further request that the Court award Mr. Ford injunctive  
18     relief to rectify the continuing harm he suffers from  
19     his unlawful detention and to prepare him for his  
20     upcoming release into the community.

21            THE COURT: I would like to thank everyone  
22     actually. The case was very well tried, very  
23     professionally tried.

24            Thank you, Mr. Ford --

25            MR. FORD: Thank you.

1 THE COURT: -- for your attention to the  
2 matters, and for all of -- all of law enforcement, who  
3 have made this possible so professionally. It's really  
4 much appreciated, and it's a trial that needed to be  
5 had, and I thank you.

6 Proposed findings and rulings? Are you  
7 going to give them to me? How much time do you people  
8 need?

9 MR. SYRETT: Yes, your Honor. We would like  
10 to submit briefings. We had discussed a schedule with  
11 counsel for the DOC. I think the -- we understand we  
12 will be able to have a transcript within about two  
13 weeks, so we had -- I think we discussed August 31st for  
14 opening briefs, and then a response perhaps within two  
15 weeks.

16 THE COURT: So what do you need?

17 MS. DANIELE: Your Honor, I discussed this  
18 with my co-counsel, and the only issue I have is I  
19 presume that means an expedited transcript of which the  
20 Commonwealth could never pay for it. I could never get  
21 approval for that. So my feeling would be we can do  
22 proposed findings of fact and rulings of law without any  
23 transcripts, just to set a deadline for that and have  
24 that one thing completed. That's how I've always done  
25 it actually.



1                   THE COURT: Well, if I do August 31st -- are  
2 you planning on ordering an unexpedited transcript or  
3 you don't know?

4                   MS. DANIELE: I would have to go back and  
5 find out if that were -- if there were money available  
6 for it.

7                   THE COURT: Why don't I do August 31st, and  
8 you can -- if you don't have a transcript, I will accept  
9 it without transcript cites. If you do have a  
10 transcript, I'll take transcript cites, and I  
11 will -- the Court will request a transcript, but I will  
12 do that for me. I can't do that for you. Okay?

13                   So August 31st for findings and rulings, and  
14 then two weeks after that -- how about September 16th  
15 for replies? All right?

16                   Now, I understand that Mr. Ford's status is  
17 supposed to change between now and then, right? Did I  
18 hear August 4th?

19                   MS. DANIELE: My understanding is  
20 August 4th, and I believe that's a Friday. So he'll  
21 be -- he's scheduled to move there, I believe, on  
22 Friday. So it would be a day or two before, but I don't  
23 think they will tell inmates when it is, but they don't  
24 do moves on Friday; so, I believe it will be a day or  
25 two before that.

1 THE COURT: I would like the proposed  
2 findings to indicate his status.

3 MS. DANIELE: Where he is?

4 THE COURT: All right. Where he is and what  
5 programs, if any, he's engaged in.

6 Mr. Ford, and anybody else who's listening,  
7 I'm really hoping this goes smoothly.

8 MR. FORD: Yes.

9 THE COURT: Okay. Let's see if the process  
10 can get started on its own without me getting motions  
11 about how it happens from either side. Okay?

12 So I'm hoping everybody will work together  
13 to make any housing transition as smooth as possible.  
14 Okay?

15 Obviously, if there are issue, I'm sure I'll  
16 hear about them.

17 Mr. Syrett.

18 MR. SYRETT: Your Honor, may we request oral  
19 argument after the submission of briefs?

20 THE COURT: Only if I need it.

21 MR. SYRETT: Okay.

22 THE COURT: All right. I appreciate the  
23 offer, but I think it's important that I -- let me see  
24 what you've done. Obviously, I've been working on this  
25 as it goes along; but it will be helpful for me actually

1 to have an updated -- you know, a status report as to  
2 the programs or -- and the housing situation because it  
3 is in transition now. Okay?

4 And, also, if DOC has a plan that it  
5 anticipates Mr. Ford going into, I would like to see it,  
6 if there's no objection, because I recognize that that's  
7 new evidence after this.

8 If there's no objection, submit it to me.  
9 If there is an objection, and there is a plan that you  
10 think it would be helpful for me to know about, file a  
11 motion. At least let me know that there's an issue  
12 about it, and maybe we'll have a hearing at that point.  
13 I am here for the entire next couple of months.

14 MS. DANIELE: Your Honor, if there's no  
15 objection, I believe that under the regulation, there's  
16 30 days for classification, which would put us a few  
17 days past that August 31st deadline; so, I'd be happy to  
18 file the classification report when it's completed  
19 if --

20 THE COURT: Is it -- am I understanding that  
21 after August 4th, whether that's a Friday or a Monday,  
22 he's going to be moved somewhere?

23 MS. DANIELE: It's anticipated that it would  
24 be the special housing unit at Souza-Baranowski for a  
25 classification. All DDU inmates virtually go from DDU

1 over to Souza segregation for classification, and  
2 there's a 30-day time period to do that classification.

3 It's my understanding that some of the  
4 process may have been begun already for Mr. Ford because  
5 it has been so long, but -- so that they could get that  
6 30 days.

7 THE COURT: Okay. I would like it  
8 after -- yes, I would like it after the class -- I would  
9 like reality.

10 MS. DANIELE: As long as --

11 THE COURT: I don't really want  
12 hypothetically what potentially could happen.

13 MS. DANIELE: As long as it's okay with  
14 plaintiff's counsel, I'd be happy to submit the  
15 classification report.

16 THE COURT: At that time, when you have it,  
17 why don't you confer --

18 MS. DANIELE: Okay.

19 THE COURT: -- and see if you want to  
20 jointly submit it to me or if not.

21 I don't know where this goes on -- whether I  
22 will need additional information about alternatives  
23 available or not. I don't know. But let me see what  
24 you're submitting on that, and then see if you can  
25 coordinate it. That would be helpful to me.

1 All right. Anything else?

2 MR. SYRETT: One other issue while we're  
3 here, your Honor. You've granted us some limited  
4 discovery about the recent DDU ticket, and I think there  
5 are still some outstanding issues, so I just wanted  
6 to -- we're still working through the discovery and  
7 weighing how they're going to follow up, but I wanted to  
8 update you on that.

9 THE COURT: Is that -- what's happening in  
10 the state court on that? Are you representing him in  
11 the state court?

12 MR. SYRETT: Yes, we are. I believe --

13 THE COURT: There are a lot of courts,  
14 Mr. Ford.

15 MR. SYRETT: I believe that we are awaiting  
16 the DOC's response to our filing, and I'm not sure what  
17 date that's due.

18 THE COURT: Is there discovery going on in  
19 that proceeding or it's only from here?

20 MR. SYRETT: It's only from here.

21 MR. ANAHORY: Your Honor, there would be no  
22 discovery on that. That is a certiorari action. They  
23 filed that complaint. The department has 90 days to  
24 respond and to file the documents and filing an answer,  
25 and the answer essentially, your Honor, is a certified

1 copy of the record down below.

2 So, it's -- it's our intention to file that  
3 within that 90-day period. Once that's done --

4 THE COURT: I just don't know when you  
5 started it. I don't know when 90 days is.

6 MR. ANAHORY: I believe we still have three  
7 or four weeks to get that filed, your Honor.

8 THE COURT: All right. Well, if you have a  
9 discovery issue, you better bring it to my attention if  
10 you can't work it out. All right?

11 And the case is -- you know, obviously the  
12 case is still open. We will deal with whatever I need  
13 to deal with.

14 All right. My concern about the  
15 disciplinary record is I obvious -- I haven't had a  
16 chance to read all of the documents that you put in as  
17 exhibits that have not been discussed; so, I don't  
18 really know totally what's in here.

19 I understand that the discipline -- the  
20 underlying disciplinary records are hearsay. I'm not  
21 sure that the fact of a disciplinary sanction or the  
22 length of that sanction would have been hearsay.

23 So I'm a little confused as -- and it could  
24 be here. I just haven't put it altogether; but if  
25 there's a chronology -- the dates shift a lot as to how

1 long he's in the DDU, when the anticipated release was,  
2 when the anticipated release happened; and I assume that  
3 has to do with good time served kind of credits and the  
4 like.

5 I don't know how important it is, but I'm  
6 confused about it. I'll just say that. If I need  
7 information, that's going to be facts and then I'll ask  
8 you for it; but I don't know whether you all have  
9 something easily that you want to submit jointly on that  
10 or not; or if it's here already -- you know, I know that  
11 to some extent some of your stipulated facts have some  
12 of the convictions in it. I just haven't put it  
13 together yet.

14 MS. DANIELE: I don't think you have it,  
15 your Honor, because it's my understanding that you had  
16 excluded the actual reports.

17 THE COURT: It's the records that are  
18 hearsay.

19 MS. DANIELE: All right.

20 THE COURT: Nobody has convinced me that  
21 that's an incorrect ruling, but I'm not -- the  
22 chronology --

23 MS. DANIELE: I think --

24 THE COURT: But I think for now I'd just go  
25 with that he was in the DDU consecutively for various

1 reasons from 199 -- whatever the date is that you gave  
2 me, since 1993.

3 MS. DANIELE: I --

4 THE COURT: Is that what the testimony is  
5 going to be?

6 MS. DANIELE: I think the testimony was in  
7 segregation rather than the DDU. Putting together --  
8 and I don't know if I can even do it, to be honest with  
9 you, an absolute date-by-date chronology because I was  
10 having difficulty myself, but --

11 THE COURT: All right. I'm not going to  
12 make you do it as a difficult exercise. If I have a  
13 problem with it, if it becomes an issue, I reserve the  
14 right to ask for it. All right?

15 All right. Is there anything further then  
16 on this matter?

17 MR. SYRETT: No, your Honor.

18 THE COURT: Again, my thanks.

19 COUNSEL IN UNISON: Thank you, your Honor.

20 MR. FORD: Thank you, your Honor.

21 THE CLERK: Court is in recess.

22

23 (At 12:03 p.m., Court was adjourned.)

24

25



C E R T I F I C A T E

I, Marianne Kusa-Ryll, RDR, CRR, do hereby  
certify that the foregoing transcript, consisting of 104  
pages, is a true and accurate transcription of my  
stenographic notes in Case No. 07cv11457-JGD, Albert  
Ford versus James Bender, et al., before Judith G. Dein,  
on July 27, 2011, to the best of my skill, knowledge,  
and ability.

/s/ Marianne Kusa-Ryll08/04/2011

Marianne Kusa-Ryll, RDR, CRR

Date

Official Court Reporter